

1901-003 Chancery Causes: Adms. of Sarah S. Ely vs. Elizabeth J. Pennington &
Lee Co. John Z. Ely & vs. J. Morison Smyth &

Folder 10/3

Trent, Travis, Parsons, Bartlett, Quillen, Lucas, Tharp, Greenwood, Cary,
Olinger, Turner, Cole, Howard, Orr, Newman, Pugh, Lewis, Caywood,
Farley, King, Doss, Maupin, Crider, Sargeant, Smith, Cooney, Carter, Johnson,
Robbins, Collier, Boothe, Hughes, Bailey, Short, Mullins, Branson,
Maloney, Cecil, Barker, Colley, Shuffelbarger, Flarary, Maxwell, Reason,
Hobbs, Stewart, Moore, Harbor, Bowen, Weston, Muncy, Fletcher, Young,
Skaggs, Gilley, Parks, Litton, Cox, Myers, Graham, Garrison, Nel,
Simpson, Humphrey, Barron, Jones, Stanley, Barron, Munsey,
Powells Valley Bank, Durcan, Quillen, Morgan, Kelly

-Deed

CA- Estate Dispute
T- Property
Transportation

Will: 1882 : Joseph M. Ely : Lee County

To the Hon. H. A. W. Skeen, judge of the Circuit Court for Lee County:

Humbly complaining, your orators, John Z. Ely and J. Morison Smyth, administrators of all and singular the goods and chattels, rights and credits, which were of Sarah S. Ely, deceased, at the time of her death, and who died intestate, respectfully represent unto your honor, that one Joseph N. Ely, a worthy citizen of this county, on the 11th. day of December, 1882 departed this life in this county, testate, a certified copy of whose will is here filed as a part of this bill, marked "W", and prayed to be taken as a part thereof; that his said will was duly probated in the County Court for Lee County, on the 19th. day of December, 1882; that as will be seen from an inspection of said will, said testator provided for the payment of all his just debts and funeral expenses, which was done, and the payment *to* William H. France the sum of \$500.00 "if living if not nothing"; that said France was not living at his death, nor did he die leaving descendants, and the remainder of his estate both real and personal he gave to his wife, Sarah S. Ely, and desired that she have sole use and control of it so long as she lived; and then after her death and all her just debts and funeral expenses were paid, he gave all of his estate at that time (meaning at the time of her death) one-third to his said wife's brother and sisters, or their descendants per stirpes, and the other two-thirds of his estate both real and personal to his own brothers and sisters per stirpes, naming them in each instance; that at the time of his death he owned in his own right two good farms situated in this county on the waters of Dry Branch, and personal property and choses in action amounting to some \$7000.00 or \$8000.00; that strange to *until recently, when St. J. William Sheriff was appointed as an administrator with the will annexed* say there was never under said will any administrator with the will annexed appointed, but the land, property, and choses in action were kept, used and controlled and money collected from the various debtors ~~xxx~~ by said Sarah S. Ely, your orators' decedent; that she so used and controlled the same until her death which took place on the *12th* day of April, 1900; that on her death, she, as well as her husband, dying childless and in old age, your orators were duly appointed as administrators of her estate by the county court for this county, and as such took charge of all her personal effects and choses in action, which amounts to something like *10,000.00*, as will be seen from an inspection of the appraisement and sale bills, which are here *referred to* and as

same by St. J. William Sheriff

a part of this bill and prayed to be taken as a part hereof, ~~marked "B"~~

As will be seen from an inspection of said Joseph N. Ely's will, your orators will further show, and represent unto your honor, that he gave one-third of his estate after the payment of his wife's debts and funeral expenses to be equally divided between America Graham, who ^{is} still living, and the heirs of Tobias S. Pennington, who are Mary P. Ely, (now the wife of your orator John E. Ely), *who is a non-resident of this State*, Cynthia Myers, John H. Pennington and Sarah E. Myers, and the heirs of Virginia *+ who also are non residents of this State* Garrison, who are Thomas Garrison and Daniel G. Simpson; that he gave the other two-thirds to his own ten brothers and sisters, each and all of whom are dead, but have descendants, as follows:

a sister
(1) Jane Smyth, died leaving eight children, to-wit:

- (1) Your orator J. Morison Smyth,
- (2) Elizabeth J. Pennington, a non-resident of this State
- (3) Sallie Trent, a non-resident of this State
- (4) Wm. Smyth, who also is dead leaving children, to-wit:
 - (1). John M. Smyth, a non-resident of this State,
 - (2). Alexander Smyth, a non-resident of this State
 - (3) Tennessee Smyth, a non-resident of this State

and eight other children, but whose names are unknown to your complainants. (Since the bring of this suit the names of these children have been found to be, Devian J. Curry, America Combs, Jas. M. Smyth, Jessie M. Smyth, Amanda G. Shackelford; and Delina C. Lane, who is dead leaving four children, to-wit: Alice May, Henderson, Belle, and Cora Lane.

(5). Edward Smyth, who is also dead, but leaving 8 children, to-wit:

- (1). Rebecca J. Travis,
- (2). J. T. Smyth,
- (3) Mary F. Parsons, a non resident
- (4) Nervia O. Bartlett, a non resident
- (5). Wm. Smyth,
- (6) Martha Quillen,
- (7). Emily Lucas,
- (8). Sarah Tharp;

(6). David Smyth, who also is dead, but left 11 children, to-wit:

- (1). Sarah M. Greenwood, who is a non resident of this State,
- (2). John M. Smyth, Jr.
- (3). James D. Smyth,
- (4). Elbert M. Smyth,
- (5). Mary J. Parsons,
- (6). Mary A. Carey, who is a non-resident of this State,
- (7). David W. Smyth,
- (8). Donie E. Olinger,
- (9). Charles Smyth,
- (10). Laura R. Parsons, who is a non resident of this State, and
- (11). Alice Turner, who is also dead but left ~~and~~ living 2 Children:
 - (1). Luther S. Turner, and
 - (2). Wm. E. Turner *not survived*

(7). James Smyth, who also is dead but left 4 children, to-wit:

- (1). Wm. Smyth, who is a non resident of this State,
- (2). Sarah Cole, who also is a non resident of this State,
- (3). Joseph L. Smyth, who also is a non resident of this State, and
- (4). Amanda Howard, who is dead, but left ⁴ two children surviving her,
but their names are unknown to your orators;

(8). Rebecca Orr, who also is dead, but left surviving her ^{six} ~~eight~~ children, to-wit

- (1). Sarah J. Parsons, who is a non-resident of this State,
- (2). John A. Orr,
- (3). W. T. Orr,
- (4). Emily Newman,
- (5). Peter H. Orr,
- (6). Dollie Pugh,

(2). Rachael Jones, ^{a sister} who also is dead but left children surviving as follows:

- (1). Sallie Turner, who is a non-resident of this State,
- (2). Fannie Lewis who also is a non-resident of this State,
- (3). Lou Annie Caywood, who is a non-resident of this State,
- (4). Emily Sargent, who is dead leaving children surviving her as follows:

- (1). Jane Farley, who is a non-resident of this State
- (2). Louisa King, who is also a non-resident of this State,
- (3). Rachael Doss, who is also a non-resident of this state,
- (4). Emily Maupin, who is a non-resident of this State,
- (5). Bettie Crider, who is a non-resident of this State,
- (6). Grant Sargent, who is a non-resident of this State, and
- (7). Mary Gaywood, who is a non-resident;

(3). Polley Smyth, ^{a sister} who is ~~dead~~, but left children surviving her as follows;

- (1). T.P. Smyth,
- (2). Sarah E. Cooney,
- (3) Mary Carter, and
- (4). Rebecca Johnson, who is dead also, but left children surviving as follows:

- (1). Joseph Johnson,
- (2). John Johnson,
- (3). Mary Robbins,

- (4) Jackson Johnson, who is a non-resident of this State,
- (5). Sarah Collier who is a non resident of this State,
- (6). Emily Turner, who is a non-resident of this State,
- (7). Vesta Boothe, who is also a nonresident of this State,
- (8). Gola Johnson, who is an infant ~~and non-resident~~,
- (9). Cora Johnson, who is an infant ~~and non-resident~~, and
- (10). Nancy Stanley, and ^{not named}
- (11). James Johnson, who is dead, but left surviving him as follows:

- (1). Fannie Johnson, who is an infant
- (2). Mollie ~~XXXXXXXXXX~~ Hughes, who is an infant,
- (3). Rebecca Johnson, who is an infant, and
- (4). Rosey ----- Johnson, who is also an infant;

(5). Joseph E. Smyth, who is dead, but left surviving him children as follows:

- (1). Tennessee Smyth,
- (2). Sarah Mullins,
- (3). Rebecca Olinger,
- (4). America Bai~~X~~ley,
- (5). Emmett Smyth, who is an infant,

- (6). Fannie Smyth, who is an infant,
 - (7). Flora Smyth, who is an infant,
 - (8). Joseph Smyth, who is an infant;
- (6). Wm. O. Smyth, who is dead, but left children surviving him as follows:
- (1). James M. Smyth who is an infant and non-resident,
 - (2). Cora Smyth, who is an infant and non-resident,
 - (3). Jackson Smyth, who is an infant an non-resident, and
 - (4) David Smyth, who is an infant and non-resident;
- (7). Francis Parsons, who is dead, but left surviving her as follows:
- (1). Emma Short, an infant
 - (2). Sherman Parsons, who is an infant,
 - (3). George Parsons, who is an infant, and
- (8). America Doss, who is dead, but has one child surviving her, to; wit:
- (1). Mary Doss;
- (4). Elizabeth Branson, an other sister who died leaving the following children:
- (1). Joseph Branson, a non-resident of this State,
 - (2). Henry Branson, who is a non-resident,
 - (3). Sampson Branson, who is a non-resident,
 - (4). Richard Branson, who is a non-resident,
 - (5). Louisa Colley, who is a non-resident,
 - (6). Sallie Parsons, *not named*
 - (7). Chandler Branson, who is dead leaving decendants, but their names are unknown to your orators,
 - (8) Fannie Howard, who is dead, leaving decendants, but their names are unknown to your orators; and
 - (9). Nimrod Branson, who is dead, leaving decendants but their names are unknown to your orators.
- (5). Francis Bailey another sister, who is dead but left the following as heirs:
- (1). Lucinda Parsons,
 - (2). Rebecca Maloney, who is a non-resident,
 - (3). H. C. Bailey,
 - (4). C. D. Bailey,

(5). John W. Bailey,

(6). Sallie Cecil,

(7). Jane Barker,

(8) Louisa Flanary, who is dead but left ^{three} ~~two~~ children surviving her:

(1). P. C. Flanary, who is a non-resident,

(2). Francis Maxwell, who is a non-resident,

(3). Lettie Shufflebarger.

mother sister of said testator
(6). Barbary Parsons, who died leaving decedents surviving her as follows:

(1). Elizabeth Parsons, who is a non-resident

(2). Susan Parsons, who is a non-resident,

(3). Jasper Parsons, who is a non-resident,

(4). Newton Parsons, who is a non-resident; and some other children, but their

names are unknown to your orators.

(7). Rebecca Reasor, another sister, who died with the following children surviving:

(1). D. S. Reasor,

(2). A. J. Reasor,

(3). Wallace Reasor,

(4). J. Green Reasor,

(5). Amanda Olinger,

(6). Fannie Collier, who is a non-resident,

(7). John Reasor, who is dead, but left the following children surviving him:

(1). Minerva Humphrey, who is a non-resident

(2). Rebecca Barron, who is a non-resident,

(3). John Reasor, who is a non-resident,

(4). Peter Reasor, who is an infant and non-resident,

(5). Fannie Reasor, who is an infant and non-resident,

(6). Belle Reasor, who is an infant and non-resident, and

(7). Cass Reasor, who is an infant and non-resident

(8) Oma Hobbs, who is dead leaving descendants, but their names are unknown
(8). Hiram Ely, another, who died leaving the following as descendants:

(1). J. Porter Ely,

(2). Isaac Ely,

(3). John Ely,

(4).George Ely,

(5).H.H.Ely,

(5).Rinda Smyth,who is dead,but left the following decendants:

(1).Jas.E.Smyth,

(2).Sarah Stewart,who is dead but left the folowing descendants:

(1).Floyd Stewart,

(2).Jas.A.Stewart,

(3).Simon Stewart,

(4).Lily Stewart,

(5).Emmett Stewart,who is an infant,

(6).Ballard Stewart,who is an infant,

(7) Laura Stewart,who is an infant,and

(3).Emily Moore,who is dead and left descendants,but your orators do
not know their names.

(7).N.H.Ely,who is dead but left the following descendants:

(1).I.P.Ely,

(2).W.S.Ely,

(3).Hiram Ely,

(4).Amanda Ely,

(5).John B.Ely,

(6).Charley Ely,

(6).J.M.Ely,who is dead and left the following descendants:

(1).Loenard Ely, who is an infant,

(2).Maud Ely,who is an infant.

(8).W.H.Ely who is dead but left the following descendants:

(1).Sarah Ely,who is an infant,

(2).Dorah Ely,who is an infant,

(3).crocket Ely,who is an infant,

(4).Hiram Ely,who is a non-resident,

(5).Laura Harber,who is dead,but left descendants,whose names are unknown
to your orators,and

(6).Elkanah Ely,who died,leaving descendants,but their names are unknown
to your orators.

(9). Jackson Ely, who died leaving descendants as follows:

- (1). Sarah Smyth, who is a non-resident,
- (2). Minerva Bowen, who is a non-resident,
- (3). Lyde Turner, who is a non-resident,
- (4). Georgia Ann Ely, who is a non-resident,
- (5). Hiram Ely, who is a non-resident,
- (6). Jackson Ely, who is a non-resident.

(10). Milton H. Ely, who died leaving descendants as follows:

- (1). Emmett Ely,
- (2). D. R. Ely,
- (3). Rosa Robbins,
- (4). Octa Smith, an infant,
- (5). Marion Ely, and infant,
- (6). Palestine Ely, an infant

(9). Nimrod C. Ely a brother ^{of said testator}, who died leaving descendants as follows:

- (1). Rebecca Weston,
- (2). Emily Munsey, who is a non-resident,
- (3). Eva Fletcher, who is a non-resident,
- (4). Susan Young, and

(5). Betsey Howard, who died leaving the following descendants:

- (1). John M. Howard, an infant,
- (2). Eva J. Skaggs,
- (3). Octa E. Johnson, and

(4). Mary Gilley, who died leaving the following descendants:

- (1). Emory Gilley, who is a non-resident,
- (2). Cornie Parks,
- (3). Creed F. Gilley,
- (4). Annis Litton,
- (5). Tip Gilley, who is an infant, and
- (6). Gale Gilley, who is an infant.

(10). A. J. Ely a brother ^{of said testator}, who died leaving the following descendants:

- (1). Rebecca Cecil,

²
(2). Mary Cox.

(3). John Z. Ely, one of your orators,

(4). Amanda Hughes,

(5). Sarah Myers,

Your orators will further show unto your honor, that they are informed that there is considerable doubt, as to the proper construction of said will of said Joseph N. Ely; and that the distribution of the funds in their hands, and which will come into their hands as administrator of said Sarah S. Ely, entirely depends upon the legal construction of the same, and such being the case your orators were unwilling to take upon themselves the risk of distributing said fund, without the sanction and order of the court; for they are advised, if they were to go ahead and distribute the same, and the courts should afterwards hold they had properly construed said will, and paid out said funds to the right persons, they would be discharged on their bond, but should the said will be construed different by the courts to their construction of the same, they would not be relieved on their bond, and would have to pay out the funds in their hands, according to the findings of the court upon the same.

Your orators are advised, and will show unto your honor, that ^{there} are three probable constructions of said will, to-wit:

First, that the funds in their hands, and that ^{which} will come into their hands as ^{as well as his entire estate} such administrators, should be disbursed by paying out to said America Graham, the heirs and descendants of Tobias S. Pennington and Virginia Garrison, one-third ^{per stirpes} of the same, and the other two-thirds to the ^{the brothers & sisters} ~~heirs~~ and descendants of Joseph N. Ely as before set out ^{per stirpes};

Second, that the estate of said Sarah S. Ely should be first charged with the net amount which went into her hands on the death of said Joseph N. Ely, and that amount divided and distributed one-third to the said America Graham, the heirs and descendants of said Tobias S. Pennington and the heirs and descendants of said Virginia Garrison, ^{per stirpes} and two-thirds of the same to be divided and disbursed among the heirs and descendants per stirpes of said Joseph N. Ely's ten brothers and sisters, above set out; and the rest and residue of said Sarah S. Ely's estate, over and above the amount that went into her hands at the death of said Joseph N. Ely to descend under the statutes of descents and distribution to the

sisters and brother of said Sarah, or their descendants, who are the said America
Benson, and Mary P. Ely, Cynthia Ely, Sarah E. Ely, and John W. Pennington, sons
and daughters of said Tobias S. Pennington, and Thomas Garrison, and Daniel F. Sim-
son who are son and grand-son of said Virginia Garrison, and a half-sister, Mrs.
Annie Reaser, who is dead but left surviving her Minerva Humphrey, Rebecca Harmon,
John Reaser, Peter Reaser, Fannie Reaser, Belle Reaser and Cass Reaser as heirs;

And third, that said ~~will~~ will in law gives absolutely and in fee simple all
the estate both real and personal to the said Sarah P. Ely, and she having died
intestate, and none under the statutes of intestate and distributions, will pass
and should be distributed among said America Benson, one share, to said John W. Pen-
nington, one share, Cynthia Ely and Mary P. Ely, children of said Tobias S. Pen-
nington, one share and to be equally divided among them, and another share to
said Thomas Garrison, or Daniel F. Simson, to be equally divided between them, and

one-half share to said children of said Anna Reaser to be equally divided
among them; and said descendants of said ten brothers & sisters of said
Joseph W. Ely take nothing whatever.

Now the respective parties considered, your orators are advised that
they could not safely undertake without the direction of the court to disburse
the effects of said estate, that courts of equity will when proper and necessary
construct wills, or fill up blanks in the proper distributions of lands in
their hands; and the costs incident to such to be paid out of the funds in their

hands that will be requisite to have these proceedings fi-
nally terminated

The prayer therefore of your orators is that you will take cognizance of
their cause of complaint; that you will construe said will, direct how and to whom
they shall pay the debts that have and will come into their hands as such estate
interests, and have every all necessary accounts as will effectually settle all
debts and liabilities under said will and all the proper administration of

said estate; that you will direct and your orators will faithfully execute
all and the respective debts persons who are alleged as being interested in the

estate of said decedent, together with those who are alleged to have been
under the general description of parties unknown

the adults in person, and their infants by a guardian ad litem
as will, and they are advised to direct the said court to have the same

*

* and in their answer set out their construction of said will

Shiriff or attorney with said J. W. Ely's will annexed

and all of said persons and their representatives to pay as assessed in said notice,
- who shall answer for them.
if done to be infants; that an order of publication be made against all
of said residents who are shown to be non-residents of this State and who
are not such persons who are of legal age and interest in their estate, but who refuse
to pay orders, as may be made under section 987 of the Code for 1897, and in-
vite having been duly made and returned thereby; and that they be allowed in their
administrative account all proper and necessary expenses and costs out of the
assets which will be directed against them as such administrators by reason of the
proceedings. And that all other further and general relief be granted them, that
the nature of this cause, good conscience and equity may require, in any will
pay, etc. may proceed issue, etc.

Sumner Glace Brown Jr.

53202-
2693-

JOSEPH L. LEE,
JOHN E. BURK,
JOHN E. RAKER,
BERRY S. LEE.

Aug 21, 1901

A Copy, Teste: John R. Gibson Clk.

B. M. Morgan Schick

W. B. 3 $\frac{1}{2}$, 55-3.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting;

WE COMMAND YOU, That you summon Elizabeth J. Pennington, Sallie Trent, John M. Smyth, Alexander Smyth, Tennessee Smyth, Rebecca J. Travis, J. T. Smyth, Mary F. Parsons, Nervie O. Bartlett, Wm. Smyth, Martha Quillen, Emily Lucas, Sarah Tharp, Sarah M. Greenwood, John M. Smyth, Jr., James D. Smyth, Elbert M. Smyth, Mary J. Parsons, Mary A. Cary, David W. Smyth, Donie E. Olinger, Charles Smyth, Laura R. Parsons, Luther S. Turner, Wm. E. Turner, Wm. Smyth, Sarah Cole, Joseph L. Smyth, unknown heirs of Amanda Howard deceased, Sarah J. Parsons, John A. Orr, W. T. Orr, Emily Newman, Peter H. Orr, Dollie Pugh, Sallie Turner, Fannie Lewis, Louannie Caywood, Jane Farley, Louisa King, Rachel Doss, Emily Maupin, Bettie Crider, Grant Sargeant, Mary Caywood, T. P. Smith, Sarah E. Cooney, Mary Carter, Joseph Johnson, John Johnson, Jackson Johnson, Mary Robbins, Sarah Collier, Emily Turner, Vesta Boothe, Gola Johnson, Cora Johnson, Fannie Johnson, Mollie Hughes, Rebecca Johnson, Johnson, Tennessee Smyth, Rebecca Olinger, America Bailey, Emmet Smyth, Fannie Smyth, Flora Smyth, Joseph Smyth, Jas. M. Smyth, Cora Smyth, Jackson Smyth, David Smyth, Emmet Short, Sherman Parsons, George Parsons, Mary Doss, Sarah Mullins, Joseph Branson, Henry Branson, Sampson Branson, Sallie Parsons, Richard Branson, Louisa Colley, the unknown heirs of Chandler Branson deceased, the unknown heirs of Fannie Howard deceased, the unknown heirs of Nimrod Branson decd., Loucinda Parsons, Rebecca Maloney, H. C. Bailey, John M. Bailey, Sallie Cecil, Jane Barker, Lettie Shufflebarger, P. C. Flanary, Francis Maxwell, Elizabeth Parsons, Susan Parsons, Jasper Parsons, Newton Parsons, D. S. Reasor, Jackson Reasor, Wallace Reasor, J. Green Reasor, Amanda Olinger, the unknown heirs of Oma Hobbs deceased, Fannie Collier, J. Porter Ely, Isaac Ely, John Ely, George Ely, H. H. Ely, J. E. Smith, Floyd Stewart, James A. Stewart, Simpson Stewart, Lillie Stewart, Emmet Stewart, Ballard Stewart, Laura Stewart, the unknown heirs of Emily Moore deceased, I. P. Ely, W. S. Ely, Hiram Ely, Amanda Ely, John B. Ely, Charles Ely, Leonard Ely, Maud Ely, Sarah Ely, Dora Ely, Crockett Ely, Hiram Ely, the unknown heirs of Laura Harber deceased, the unknown heirs of Elkanah Ely deceased, Sarah Smyth, Minerva Bowen, Lyde Turner, Georgia Ann Ely, Hiram Ely, Jackson Ely, Emmet Ely, D. R. Ely, Rosa Robbins, Octa Smith, Marion Ely, Palestine Ely, Rebecca Weston, Emily Muncy, Eva Fletcher, Susan Young, John M. Howard, Eva J. Skaggs, Octa E. Johnson, Emory Gilley, Cornie Parks, Creed Gilley, Annis Litton, Tip Gilley, Gale Gilley, Rebecca Cecil, Mary Cox, C. D. Bailey, Amanda Hughes, Sarah Myers, America Graham, Mary P. Ely, Cynthia Myers, John H. Pennington, Sarah E. Myers, Thomas Garrison, Daniel G. Simpson, Minerva Humphrey, Rebecca Barron, John Reasor, Peter Reasor, Fannie Reasor, Bell Reasor, Cass Reasor, John Z. Ely, *Nancy Stanley*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for said Court, on the 3rd Monday in May, 1900, to answer a bill in Chancery exhibited against them in our said Court by John Z. Ely and J. Morison Smyth Administrators of the estate of Sallie S. Ely deceased.

And have then there this writ. Witness A. B. MUNSEY Clerk of our said Court, at the Court-house, the 23rd day of April, 1900, and in the 124th year of the Commonwealth.

A. B. Munsey CLERK.

Executed on the 12 day of May 1900
by delivering true copies of the within
summons to the following persons to wit
J. J. Smith Martha Duillen Emily
Lucas Sarah Thark John M. Smyth Jr
James J. Smyth Elbert M. Smyth
Mary J. Parsons David W. Smyth
Donie E. Clinger Charles Smyth
John A. Orr W. J. Orr Emily Keown
Peter A. Orr Dollie Pugh J. P. Smith
Sarah Mallins Mary Carter Joseph
Johnson John Johnson Mary Robbins
Fenimore Smith Rebecca Clinger
America Bailey Someinda Parsons
H. B. Bailey John M. Bailey C. D. Bailey
Jane Barker Lettie Shuffelbarger
D. S. Reaser Jackson Reaser Wallace
Reaser Green Reaser Amanda Clinger
J. Porter Ely George Ely W. D. Ely
J. C. Smyth Floyd Stewart J
James A. Stewart Simon Stewart
Lilly Stewart W. S. Ely Hiram Ely
Amanda Ely John B. Ely Charles Ely
Emmet Ely D. R. Ely Rosa Robbins
Susan Young Eva J. Skaggs Corrie
Parker Oeta E. Johnston Greed Lilly
Rebecca Cecil Mary Cox John J. Ely
Amanda Hughes Sarah Myers
America Graham Mary J. Ely
John H. Pennington Sarah E. Myers
Dollie Taron Oeta Smith
Francis Maxwell J. Marison Smith
Sarah Callier by D. P. Ely Sept
for W. D. Miles & L. C.

John J. Edwards & J. Morrison
Smyth adms. &c.

vs. } Billee Chanary

Elizabeth J. Pennington

1900 2nd May Rules bill
filed & pa executed on
home debts & D. N. and
O.P. for non residents

" 1st June rules taken the
last Monday in May
O.P. Complete & D. N.
Conf'd. & Cause set for
hearing.

E.W. PENNINGTON.

ROBT L. PENNINGTON

Pennington Bros.

ATTORNEYS AT LAW,

JONESVILLE AND PENNINGTON GAR, VA.

- (1). John A. Snytt, who is a non-resident,
(2). Alexander Snytt, who is a non-resident,
(3). Terrence Snytt, who is a non-resident,

These children to be, Levis J. Curry, Levis Thomas, Geo. J. Curry, Jas. F. Curry, George F. Curry, and George C. Curry, and William J. Curry, who is dead, but left four children, to-wit: Alice May, Webster, Sally, and Tom May, and all of whom are now residents.

- (1). Rebecca S. Friele,
- (2). M. P. Smyth,
- (3). Mary E. Parsons, who is a non-resident
- (4). Hervis C. Bartlett, who is a non-resident,
- (5). M. Smyth,
- (6). Martha Miller,
- (7). Emily Lucas, and
- (8). Sarah Lamb;

(10). Laura T. Parsons, who is a non-resident of this State, and

(11). Alice Turner, who is dead, leaving two children, to wit:

(1). Father T. Turner, *an infant and*

(2). M. T. Turner, *an infant*

(12). James Smyth, who is dead, but left surviving as follows as heirs:

(1). W. Smyth, who is a non-resident of this State,

(2). Sarah Cole, who is a non-resident of this State,

(3). Joseph A. Smyth, who is a non-resident of this State, and XXXXX

(4). George Howard, who is dead but left surviving her two children, but your complainants do not know their names

(13). Rebecca Orr, who is dead but left surviving her six children as heirs:

(1). Sarah C. Parsons, who is a non-resident of this State,

(2). John A. Orr,

(3). M. O. Orr,

(4). Emily Wexman,

(5). Peter F. Orr, and

(6). Dollie Pugh.

Second, Rachel Jones, another sister of said testator, who is dead but left as heirs:

and descendants, as follows:

(1). Sallie Turner, who is a non-resident of this State,

(2). Fannie Lewis, who is a non-resident of this State,

(3). Lou Annis Gaywood, who is a non-resident of this State, and

(4). Emily Barrett, who is dead but left descendants as follows:

(1). Jane Herley, who is a non-resident of this State,

(2). Louise Wigg, who is a non-resident of this State,

(3). Rachael Todd, who is a non-resident of this State,

(4). Emily Maudie, who is a non-resident of this State,

(5). Fattie Grifer, who is a non-resident of this State,

(6). Frank Barrett, who is a non-resident of this State, and

(7). Mary Gaywood, who is a non-resident of this State,

Third. Polly Smyth, another sister of said testator, who is dead, but left as descendants and heirs, as follows,

(1). F. P. Smyth,

✓ (2). Sarah Cooney,

✓ (3). Mary Carter,

(4). Rebecca Johnson, who is dead, but left children as follows:

✓ (1). Joseph Johnson,

✓ (2). John Johnson,

✓ (3). Mary Robbins,

(4). Jackson Johnson, who is a non-resident of this State,

(5). Sarah Collier, who is a non-resident of this State,

(6). Emily Turner, who is a non-resident of this State,

(7). Vestal Boone, who is a non-resident of this State,

(8). John Johnson, who is an infant

(9). Cora Johnson, who is an infant,

(10). Fanny Stanley, and

(11). James Johnson, who is dead, but left children as follows:

(1). Fannie Johnson, who is an infant,

(2). Lollie Thayer, who is an infant,

(3). Rebecca Johnson, who is an infant,

(5). James (4) ^{Rosa} Thayer, who is an infant, who is dead, but left children as follows:

✓ (1). Fanny Thayer,

✓ (2). Sarah Mullins,

✓ (3). Rebecca Clinger,

✓ (4). America Bailey.

(5). William Thayer, who is an infant,

(6). Fannie Thayer, who is an infant,

(7). Flora Thayer, who is an infant, and

(8). Joseph Thayer, who is an infant

(6). Mr. O. Thayer, who is dead, but left children as follows:

(1). Joseph M. Thayer, who is an infant and non-resident of this State,

(2). Cora Thayer, who is an infant and non-resident of this State,

(3). Jackson Thayer, who is an infant and non-resident of this State,

(4). David Thayer, who is an infant and non-resident of this State;

(2). Francis Parsons, who is dead, but left children as follows:

- (1). Emma Short, an infant,
- (2). Herman Parsons, who is an infant,
- (3). George Parsons, who is an infant;

(3). America Doss, who is dead, but left one child surviving her, to-wit:

- (1). Mary Doss, who is an infant;

Fourth; Elizabeth Branson, another sister of said testator, who is dead, but left the following children and descendants:

- (1). Joseph Branson, who is a non-resident of this State,
- (2). Perry Branson, who is a non-resident of this State,
- (3). Sampson Branson, who is a non-resident of this State,
- (4). Richard Branson, who is a non-resident of this State,
- (5). Gomiza Colley, who is a non-resident of this State,
- (6). Bellie Parsons,
- (7). Charles Branson, who is dead, but left descendants, but their names are unknown to your complainants;
- (8). Vannie Howard, who is dead, but left descendants, but their names are unknown to your complainants, and
- (9). Alfred Branson, who is dead leaving descendants, but their names are unknown to your complainants;

Fifth. Francis Bailey, another sister of said testator, but who is dead, leaving the following children and descendants surviving her:

- (1). Lucinda Parsons,
- (2). Rebecca Valoway, who is a non-resident of this State
- (3). F. C. Bailey,
- (4). C. O. Bailey,
- (5). John F. Bailey,
- (6). Nellie Cecil,
- (7). Jane Barker, and
- (8). Louise Flanery, who is dead, but left the following children:
 - (1). F. C. Flanery, who is a non-resident of this State,
 - (2). Francis Maxwell, who is a non-resident of this State,
 - (3). Lottie Shaffelberger.

Sixth: Barbara Parsons, another sister of said testator, who died and left the following descendants:

- (1). Elizabeth Parsons, who is a non-resident of this State,
- (2). Oscar Parsons, who is a non-resident of this State,
- (3). Jasper Parsons, who is a non-resident of this State,
- (4). Newton Parsons, who is a non-resident of this State,
- (5). And some other children, who are unknown to your excellency.

another sister of said testator
Seventh: Rebecca Passol, who is dead, but left the following descendants:

- (1). D. S. Passol,
- (2). A. S. Passol,
- (3). Wallace Passol,
- (4). J. Fred Passol,
- (5). Fannie Collier, who is a non-resident,
- (6). Emma Glinzer,
- (7). John Passol, who is dead, but left the following children as heirs:
S. Mustard
 - (1). Minerva ~~Mustard~~, who is a non-resident of this State,
 - (2). Rebecca Warren, who is a non-resident of this State,
 - (3). John Passol, who is a non-resident of this State,
 - (4). Peter Passol, who is an infant and non-resident of this State,
 - (5). Fannie Passol, who is an infant and non-resident of this State,
 - (6). Belle Passol, who is an infant and non-resident of this State, and
 - (7). Gert Passol, who is an infant and non-resident of this State;

(8) Anna Hobbs who is dead her heirs are unknown
Eighth: Hiram Fly, a brother of said testator, and who died leaving the following

descendants:

- (1). J. Porter Fly,
- (2). Jesse Fly, who is a non-resident of this State,
- (3). John Fly, who is a non-resident of this State,
- (4). George Fly,
- (5). J. W. Fly,
- (6). Finner Sayre, who is dead, but left surviving the following descendants:
 - (1). James S. Sayre,
 - (2). Carol Stearns, who is dead, but left the following descendants:
 - (1). Hugo Stearns,

- (2). James A. Stewart,
 - (3). Simer Stewart,
 - (4). Lily Stewart,
 - (5). Everett Stewart, who is an infant,
 - (6). Ballard Stewart, who is an infant,
 - (7). ^a Lucy Stewart, who is an infant
- (8). Emily Moore, who is dead, but left children surviving her, but their names are unknown to your complainant.
- (7). W. B. Fly, who is dead, but left surviving him the following descendants:
- (1). I. F. Fly,
 - (2). W. B. Fly,
 - (3). Hiram Fly,
 - (4). Alfred Fly,
 - (5). John B. Fly,
 - (6). Charles Fly,
 - (7). J. W. Fly, who is dead, but left the following descendants:
 - (1). Leonard Fly, who is an infant, and
 - (2). Lucie Fly, who is an infant;
- (8). J. P. Fly, who is dead, but left the following descendants:
- (1). Sarah Fly who is an infant,
 - (2). Dorah Fly, who is an infant,
 - (3). Crockett Fly, who is an infant,
 - (4). Hiram Fly, who is a non-resident of this State,
 - (5). Laura Barber, who is dead, but left descendants, yet whose names are unknown to your complainants, and
 - (6). Ellsarah Fly, who is dead, but left descendants, yet their names are unknown to your complainants.
- (9). Jackson Fly, who is dead, but left the following descendants:
- (1). Sarah Smith, who is a non-resident,
 - (2). Minerva Baker, who is a non-resident of this State,
 - (3). Lucy Turner, who is a non-resident of this State
 - (4). Georgia Ann Fly, who is a non-resident of this State,
 - (5). Hiram Fly, who is a non-resident of this State

- (8). Jackson Fly, who is a non-resident of this State,
- (10). Milton F. Fly, who is dead, but left descendants surviving as follows:
- (1). Everett Fly,
 - (2). D. R. Fly,
 - (3). Nora Robbins,
 - (4). Oeta Smith, ~~and others~~
 - (5). ¹Marion Fly, and infant
 - (6). Palestine Fly, an infant.

Eight: Edward C. Fly, another brother of said testator, who died leaving the following descendants:

- (1). Rebecca Weston,
 - (2). Emily Wussel, who is a non-resident of this State
 - (3). Eva Fletcher, who is a non-resident of this State,
 - (4). Susan Young, and
 - (5). Betsey Rogers, who is dead, but left the following descendants:
- (1). Eva J. Rogers,
 - (2). Oeta E. Johnson,
 - (3). John W. Rogers an infant, and
 - (4). Mary Gilly, who is dead but left the following children surviving her:
- (1). Emory Gilly, who is a non-resident of this State,
 - (2). Cornis Parls,
 - (3). Crean F. Gilly,
 - (4). Jennie Ditton,
 - (5). Ed Gilly, who is an infant
 - (6). Paul Gilly, who is an infant

Nine: Andrew J. Fly, who died leaving the following children or descendants:

- (1). Rebecca Ocell,
- (2). ~~Adeline~~ ^{Adeline} ~~Adeline~~,
~~Adeline~~
- (3). Sarah Myers, and
- (4). John J. Fly, one of your exors.
- (5). ^EMary [^]Don.

Princeton Gros. 9-3

Joseph M. Fly's last will and testament, this the 20th day of January, 1902 I Joseph M. Fly desire in the first place that all my just debts be paid and funeral expenses also; in the second place I desire that after my decease William M. Graham shall have five hundred dollars if living if not living nothing, and in the third place I desire and will all the remainder of what I am possessed at my decease both real and personal to Sarah M. Fly my wife I desire that she shall have the sole use and control of it so long as she may live, and after her death and after all her just debts and funeral expenses are paid I desire one third of all my estate at that time both real and personal to be equally divided between my wives brothers and sisters if living I will give their names Tobias S. Pennington, Virginia Garison America Graham, now as Tobias S. Pennington and Virginia Garison has already deceased, I desire that their heirs shall have their part, now if America Graham shall depart this life before the above distribution of my estate is made I will that her heirs shall have and equally divide her part, I desire and will the other two thirds of my estate both real and personal to be equally divided between my brothers and sisters if living if not living I desire one fourth of those that may have deceased before this distribution is made of my estate to draw their Father's or Mother's part, and equally divide it between them, I will give the names of my brothers and sisters above referred to John Ayto, Elizabeth Graham wife of: Rachel Jones, Harry Parsons Frances Bailey: Winced M. Fly, Rebecca Joneser Sally South Andrew S Fly.

Joseph M. Fly,
John M. Burk,
John M. Graham,
Harry Graham.

Virginia,

It is County Court order and rule for this County at the Court-house thereof, on Tuesday the 10th day of December, 1902.

The last will and testament of Joseph M. Fly was this day produced in court and read by the order of John M. Graham, John M. Burk and Harry Graham the subscribing witnesses thereto and ordered to be recorded.

A copy
Teste John R. Gibson Clerk.

A Copy Teste:
B. M. Morgan Clerk.

W.B. No. 3. p. 553

John Z & Mary P. Ely.

vs. } Bill in Chancery

J. Monahan Smyth et al

1900. 2nd May Rules bill
filed. Sp. executed on home
defts & O. P. for non-residents
& D. N.

" 1st June rules taken the
last Monday in May O. P.
Complete & D. N. Confd & Cause
set for hearing.

F. W. PENNINGTON

ROBT. L. PENNINGTON

Pennington Bros.

ATTORNEYS AT LAW.

JONESVILLE AND PENNINGTON GARVA.

To the Honorable H.A.W.Skeen, Judge of the Circuit Court of Lee County, Virginia:

Your petitioner, J.C.Noel, will respectfully represent and show unto your Honor that when the suit in chancery was instituted in this Honorable Court by J.Morrison Smyth and John Z.Ely administrators of the estate of Sarah Ely, deceased, the purposes of which was to have the will of the late Joseph N.Ely, deceased, construed; that after Judge C.T.Duncan was employed as stated in his petition which your petitioner has read and here adopts the same as a part of his petition, that he was approached by heirs of Sarah S.Ely and representatives of heirs and asked to assist C.T.Duncan in the conducting of their defence in said ~~Two~~ suits; that they informed him of the contract they had made with said C.T.Duncan and he agreed to ~~an~~ undertake to assist in said defence on the same terms: that is for a certain fee of \$10.00 and a contingent fee of a reasonable fee of a reasonable commission on all of said estate held by the heirs of Sarah S.Ely in excess of one-third of said estate.

Your petitioner faithfully performed his duties in all things and he represents to your Honor that a fee of ~~5%~~ on said excess in addition to said \$10.00 will be a reasonable, and only reasonable fee for the services performed by him, and this he prays the Court will direct to be paid to him by the administrators of said estate and the Commissioners appointed to sell the land. And as in duty bound he will ever pray &c.

J.C.Noel

Virginia, Lee County, to-wit:

This day personally appeared before me, Geo.P.Cridlin, a notary public in and for the County and state aforesaid, J.C.Noel, whose petition is written above, and made oath that the facts stated therein are true to the best of his knowledge and belief.

Given under my hand, this the 5th day of March, 1901.

Geo. P. Cridlin
Notary public.

Sum 076
of Morrison Survey to the State
by Petition of
rs' J. C. Stoll

Joseph S. Day's heirs

Filed in open Court and
by leave thereof March
the 5th 1901.

A. B. Munsey Clerk

To the Hon. H. A. H. Skene Judge
of the Circuit Court for Sw Co.

Your petitioner, the
Powell Valley Bank, a cor-
poration doing business under
the laws of the State of Virginia
would respectfully show
unto your honor that by vir-
tue of some of your honor re-
turned at the March term 1901
in the chancery cause of John
Z. & Mary S. Ely vs. J. Johnson
Smith et al, it brought from
James H. Hall & Dunnington two
notes on N. L. Johnson are of
A. Johnson for \$1764⁰⁰ each,
and dated Jan. 21st 1901 and
payable in one and two
years from their date with
interest; that said notes
were executed by said
Johnson for the same piece
of land of the late J. M. &
Sarah S. Ely; that since said
notes were bought by your
petitioner, said Johnsons have
paid off the first one, and
that there ~~is~~ is yet due
\$1764⁰⁰ with Int. from Jan.

21st 1901.

Your petitioner begs leave
to state it has a lien on
the land for which said
note was given; but is willing
if your honor sees fit to do
so, that a sum be appointed
and said N. E. Johnson be
made a deed to said land,
retaining therein a lien upon
said land for said \$1764⁰⁰
with interest from Jan 21st
1901 till paid in favor of
your petitioner

And it will ever pray &c

POWELL'S VALLEY BANK
JONESVILLE, VA.

By O. E. Evans Esq.

Ely & Snyth

Petition of
vs } Towns Valley
Bank

J. M. Snyth & Co

Filed in open Court
and by leave thereof
November 7th 1901

A. B. Munsey Clerk

To the Honorable H.A.W.Skeen, Judge of the Circuit Court for Lee County, Virginia:

Your petitioner C.T.Duncan, will respectfully represent and show to your Honor that when the suit in Chancery was instituted in this Honorable Court by J.Morrison Smyth and John Z.Ely, administrators of the estate of Sarah Ely, deceased, the purposes of which was to have the will of the late Joseph N.Ely construed, that he was approached by representatives of the heirs, and heirs, of the late Sarah Ely and asked by them to defend their interest in said suit together with their interest in the suit filed by John Z.Ely and wife against the administrators of Sarah Ely, the heirs of Sarah Ely and the heirs of Joseph N.Ely. These parties claimed to represent all of the heirs of Sarah Ely, deceased, except the heirs of Amanda J.Reasor deceased. They made a contract with your petitioner to pay him the sum of \$10.00 and a conditional fee of a reasonable per cent on all of said estate held by the said Sarah Ely's heirs over and above the one-third part thereof; and they further agreed to employ another attorney to assist him in said defence.

Your petitioner will now show your Honor that he faithfully represented said heirs in said litigations and that he filed ther answer, carefully briefed their case, argued the said in all of which he was ably assisted by John C.Noel a practicing attorney of this Bar.

Your petitioner further represents that as your Honor is fully aware the will was so construed as to give to the said Sarah S.Ely's heirs the 11 acre tract of land, which sold for \$825.00 and some \$3600.00 to \$4000.00 in personal property over and above one-third of a said entire estate.

Your petitioner will now further represent that a commission of ~~5%~~ on all of said funds in excess of one-third as aforesaid will be a very low and certainly a ver reasonable fee for his services in addition to said \$10.00. All of which your petitioner asks your Honor to direct to be paid to him by the administrators and the commissioners who sold the land before the fund in their hand is distributed to said heirs. And as in duty bound your petitioner will ever pray &c.

C. T. Duncan

Virginia, Lee County, to-wit:

This day, C.T.Duncan, personally appeared before me, Geo.P.Cridlin a notary public in and for said County and state aforesaid and made oath that the facts stated in the foregoing petition are true to the best of his knowledge and belief.

Given under my hand, this the 5th day of March, 1901.

Geo. P. Cridlin
Notary public.

Monroe survey to state

Petition of

W. H. C. Duncan

vs. S. E. Ely's heirs


*Filed in open Court and
by leave thereof March 5th*

1901. A. B. Munsey Clerk

\$ 5 00.

one day after date I promise
to pay James P. Ely. five
Dollars. for value received
of him I waive the home
stead &c. all other Exemption
Laws as to this debt
Witness my hand and Seal
this Oct. the 10 day 1888

His

Test  J. P. Ely Seal
Clark. Rider J. May

note \$ 500

A. J. Ely

\$25.00

By the first of October
1889 I bind myself heirs
and to pay agree A. Ely
twenty five dollars for value
received of him. Waive the home
stead and all other Exemption laws
as to this debt. Witnesses our hands
and Seal this Oct 20 1888

A. J. ^{hug} Ely {Seal}
mark

Test

Elizabeth E. Ely

To the Hon. W. A. H. Shum, Judge of
the Circuit Court for Lee County.

Your petitioner Isaac P. Ely
would respectfully represent unto
your honor that John Z. Ely and
J. M. Smith as adms. of the
estate of Sarah S. Ely have
instituted ~~an~~ suit against
the heirs of Sarah S. Ely and
heirs of Joseph M. Ely, for the
purpose of construing the will
of said Joseph M. Ely and to
direct them how and to whom
to pay the money in their hands,
that in an order in said
cause entered on the day
of August, 1900, your honor
decided that the brothers
and sisters of said Joseph
M. Ely, and their descendants
were entitled to two-thirds
of the estate left by Sarah
S. Ely.

Your petitioner will further

show unto your honor that
A. J. Ely (son of Hiram) departed
this life ^{intestate} in Ely - about the
year 1896, - long after the
death of said Joseph H. Ely;
that said A. J. Ely's ~~will~~
in his life time made and
executed and delivered to your
petitioner a note for \$25⁰⁰ pay-
able Oct. 1st, 1889; That said
note is still due and unpaid;
that said A. J. Ely in his life
time made and executed to
James P. Ely a note for \$5⁰⁰ and
due one day after date; that
said James P. Ely has transferred
^{and assigned} his note to your petitioner and
the same is also unpaid; That
said A. J. Ely died leaving him
a widow, Elizabeth Ely,
and six children to-wit
Sarah Smyth, Minerva Bowen, Lyda, Hiram
George Ann Ely, Hiram Ely and Jackson Ely
as heirs at law and distrib-
utors of the estate of A. J. Ely

and so such are entitled
to the share of their father
subject to the payment of his
debts;

Now your petitioner is advised
that he is entitled to have
his said debt decreed against
the share of said A. J. Ely in
said ^{and Sarah's} Joseph N. Ely's estate;
and said adms. directed to
pay the same.

The prayer therefore of
your petitioner is that he be allow-
ed to file this petition, that said
Sarah Smith, Minerva Bowen, Lyda
Turner, William Ely and Joseph
Ely and John J. Ely and J. M. Smith adms.
of the estate of said Joseph N. Ely
be made parties defendants
to the same, that they be re-
quired to answer but not an
oath, that an order of publi-
cation be made against
said defendants as they are
all non-residents of
this State; that on a hearing
of this petition, he be given
a decree for said sums of
money, and said Ely & Smith

* W. J. Williams adm. of the
estate of A. J. Ely decd

advers. of Sarah S. Ely be
 directed to pay the same out of
 the fund in their hands belonging
 to the heirs and distributies of
 said A. J. Ely; and that all other
 aid of general relief be awarded
 him as the nature of his cause
 may require

J. P. Ely by
 Drummington Bros.

A. J. Ely

vs Petitioner

A. J. Ely's heirs

1901 1st May rules petition
 filed & O. P. & Court
 " 2 May rules O. P.
 Complete & Cause set
 for hearing by
 self.

Plffs costs

Clerk 3.60

Printer 8.00

J. P. 1.75

~~Att~~ 7.23

wit .50

12.83

John Z. and Mary P. Ely, et al,

Comaplainants,

vs: In Chancery

J.M. Smith et al.

Defendants,

To the Hon. H. A. W. Skeen, Judge of the Circuit court for Lee Co.:

The answer of Fannie Johnson, Cola Johnson, Cora Johnson, Molly Hughes, Rebecca Johnson, Rosa Johnson, Emmet Smyth, Fannie Smyth, Flora Smyth, Joseph Smyth, James M. Smyth, Cora Smyth, Jackson Smyth, David Smyth, ~~Emma~~ Emma Short, Sherman Parsons, George Parsons, Mary Doss, Emmet Stewart, Ballard Stewart, Laura Stewart, Leonard Ely, Maude Ely, Sarah Ely, Don Ely, Crockett Ely, Marion Ely, Palestine Ely, John M. Howard, Tip Gilly, Gale Gilly, Luther S. Turner and William E. Turner, infants under the age of 21 years, parties defendant in the foregoing suit in chancery now pending in the Circuit Court of Lee County, Virginia, by James W. Orr, their guardian ad litem, appointed by decree of this court to defend their interests in said suit.

Reserving to themselves all just exceptions that may be had to the plaintiffs bill, these respondents answering say:

That they are infants of tender years and not capable of defending their own interests, and they are advised that infants are the especial objects of the care and protection of a court of chancery, and they commit their interest to this court, praying that they be fully protected by any decrees or orders entered in this cause, and that nothing be done to the prejudice of their rights.

They further say by their guardian ad litem that an answer has been filed in this cause by John Z. & Mary Ely

and others, adult defendants herein whose interests herein are largely identical in ~~number~~ principle with that of these infant defendants, and these defendants adopt the answer of said adult defendants as a part of theirs and pray that it be considered as a part hereof as fully as if copied herein in full.

And now having answered as fully as they are advised it is material they should answer, these respondents pray to be hence dismissed with their proper costs.

*James W Orr, Guardian
ad litem for Respondents.*

Virginia, Lee County, to wit:-

I, A. B. Munsey clerk of the Circuit court for Lee County do hereby certify that James W Orr guardian ad litem for the foregoing named infant defendants this day personally appeared before me and made oath that the facts set out and the representations made in the foregoing answer are true to the best of his knowledge and belief. Given under my hand this the 8th day of June, 1900.

A B Munsey clerk.

J. B. Ely sec. Receipts.

vs. 3 Messrs of
J. M. Orr G. M. R.

J. M. Smyth sec

Filed in open court and by
leave thereof June 11th 1900

A. B. Munsey clerk

E. W. PENNINGTON.

ROBT. L. PENNINGTON

Pennington Bros.

ATTORNEYS AT LAW,

JONESVILLE AND PENNINGTON GAP VA.

To the Hon.H.A.W.Skeen,judge of the circuit court for Lee county:

The answer of W.J.Milham,administrator with the will annexed of Joseph N.Ely,to a bill of complaint filed in this court by J.Z.Ely,and J.M.Smyth administrators of Sarah s.Ely decd,against him amd others.

Your respondent reserving to himself the benefit of all just exceptions to said bill,answering he says:

~~That~~he personally knows nothing of the matters and things set out in said bill,nor does he either confess or deny any of the allegations contained therein.

Your respondent alleges and asserts that while he is administrator with the will annexed of Joseph N.Ely he does not have,nor ever did have and is informed never will have any effects,or money in his hands of said decedent. He is informed that this estate was committed to him as sheriff for Lee County for the purposes of some litigation, and especially this litigation.

Having therefore answered as fully and completely as he deems it necessary that he should answer, prays to be hence dismissed with his reasonable costs in this behalf expended.

W.J. Milham. Admr.

of the estatet of J.N.Ely decd.

Orr and Irvin

&

Pennington Bros.

Attys.

To the Hon. H.A.W.Skeen, judge of the circuit court for Lee County:

John Z.Ely and J.M.Smith, ADmrs, et al, Complainants,

vs: In Chancery

Elizabeth J.Pennington et al, Defendants.

The answer of Fannie Johnson, Gola Johnson, Cora Johnson, Molly Hughes, Rebecca Johnson, Rosa Johnson, Emmet Smyth, Fannie Smyth, Flora Smyth, Joseph Smyth, James M. Smyth, Cora Smyth, Jackson Smyth, David Smyth, ~~Emmet~~ Emma Short, Sherman Parsons, George Parsons, Mary Doss, Emmet Stewart, Ballard Stewart, Laura Stewart, Leonard Ely, Maude Ely, Sarah Ely, Don Ely, Crocket Ely, Marion Ely, Palestine Ely, John M. Howard, Tip Gilly, Gale Gilly, Luther S. Turner and William E. Turner, infants under the age of 21 years, parties defendant in the foregoing suit in chancery now pending in the Circuit Court of Lee County, Virginia, by James W Orr, their guardian ad litem, appointed by decree of this court to defend their interests in said suit.

Reserving to themselves all just exceptions that may be had to the plaintiffs bill, these respondents answering say:

That they are infants of tender years and not capable of defending their own interests, and they are advised that infants are the especial objects of the care and protection of a court of chancery, and they commit their interest to this court, praying that they be fully protected by any decrees or orders entered in this cause, and that nothing be done to the prejudice of their rights.

They further say by their guardian ad litem that an answer has been filed in this cause by J. J. Smyth et al

and others, adult defendants herein whose interests herein are largely identical in ~~number~~ principle with that of these infant defendants, and these defendants adopt the answer of said adult defendants as a part of theirs and pray that it be considered as a part hereof as fully as if copied herein in full.

And now having answered as fully as they are advised it is material they should answer, these respondents pray to be hence dismissed with their proper costs.

*James W Orr, Guardian
ad litem for Respondents.*

Virginia, Lee County to wit:-

I, A.B. Munsey Clerk of the Circuit court for Lee County do certify that James W Orr guardian ad litem for the forgoing infant defendants this day personally appeared before me and made oath that the representations made in the foregoing answer are true to the best of his knowledge and belief. Given under my hand this the 8th day of June, 1900.

A.B. Munsey Clerk.

J. M. Smith & Co. Attors.

vs. 3 Messrs of
J. M. Dr. G. H. L.

E. J. Pennington vs.

Filed in open Court and by
leave thereof June 11th 1900
A. B. Munsey Clerk

E. W. PENNINGTON.

ROBT. L. PENNINGTON

Pennington Bros.

ATTORNEYS AT LAW,

JONESVILLE AND PENNINGTON GAP VA.

To the H:norable H.A.W.Skeen, Judge of the Circuit
Court for Lee County, Virginia:

The answer of Rebecca Weston to a bill of complaint filed in said Court by John z.Ely and J.Morrison Smyth, Administrators of all and singular the goods and chattels, rights and credits which were of Sarah S.Ely, deceased, at the time of her death, and who died intestate, against her and others.

Your respondent reserving to herself all just exceptions to the plaintiffs' bill, yet answering says:

That it is true as stated in said bill that the said Joseph N.Ely, ^{testate} ~~as she supposes~~, on the 11th day of December 1882, departed this life; that a certified copy of said Ely's will is filed with the plaintiffs' bill marked "W"; that said will was duly admitted ^{to probate} in the court and on the date stated in the bill; that the bill correctly states so far as this respondent knows the names and present status of the ~~descendants~~ the brothers and sisters and their descendants of the said Joseph N. Ely, deceased, and also the names and status of the brothers and sisters, and their descendants, of the said Sarah S.Ely deceased; that she supposes it is true that the said John Z.Ely and J.Morrison Smyth have qualified as stated in the bill, as administrators of the estate of the said Sarah S.Ely, but whether or not the amount of the personal estate of the said Sarah S.Ely, which has or will come into their hands, as such administrators, is correctly stated, she does not know, and neither admits or denies that allegation.

Your respondent further answering says it is true that she, Emily Munsey, Eva Fletcher, Susan Young and Betsey Howard are the five daughters of Nimrod C.Ely who was a brother of the testator, Joseph N. Ely and is the same Nimrod C.Ely mentioned by the said testator in his said will, and that she supposes that the descendants of her sister Betsey Howard deceased are all correctly stated in said bill; ~~#####~~

Respondent says that it is true as stated in the bill that the said William H.France was not living at the death of the testator, nor did he die leaving any descendants.

Respondent further answering says that she is advised and here charges and insist upon it, that there is but one correct interpretation of the will under consideration, which is as follows, ^{viz} The first interpretation of said will set out by the plaintiffs in their bill which is in brief that all the personal estate which has or will come into the hands of the said administrators, should be disbursed by paying out to the brothers and sisters of Sarah S.Ely or their descendants one-third of the net amount thereof, and to the brothers and sisters or their descendants, of the said Joseph N.Ely two-thirds of the net amount thereof, and that the said real estate be divided in the same way, but if in the opinion of the Court the interest of the parties would be promoted by a sale of the said real estate, then the proceeds thereof be distributed in the same way, and she asks that the said entire estate be divided and distributed upon the basis as stated; or in other words that the entire estate of the said Joseph N.Ely be divided by giving to the brothers and sisters or their descendants of Sarah S.Ely one-third thereof, and to the brothers and sisters or their descendants, of the said Joseph N.Ely two-thirds thereof, and your respondent is advised and humbly submits that this construction is in conformity with the clear and unmistakable intention of the testator as will be clearly seen from the reading of the whole will.

Your respondent further states that it was always the desire of the testator and his wife Sarah S.Ely that the brothers and sisters ~~or their descendants~~ or their descendants of the said Sarah S.Ely should have one-third of the entire estate of the said Joseph and that his brothers and sisters or their descendants should have two-thirds, and it was always agreed and understood between them that it should so pass and that his said will was made to carry out this purpose, and that the acts and the expressions of the said Sarah clearly show that this was his object, and that it was with this view that he gave to his wife an estate for life in his said property; that they had no children by their marriage, and that ^{it is} as the clear intention of the will that the property should vest in the parties in the proportion as stated in

said will, your respondent is advised that that intention will never be defeated by a technical construction of the will.

Your respondent says that she has been unable to have a consultation with her sisters to arrange for them all to join in the defence of this suit and for them all to contend together for their rights under said will, but she believes it is the desire of all to do so, yet this is her answer alone and she thinks when they have actual notice of the pendency of this suit, that they will contend for the same as she is now contending.

upon the true & correct construction of said will
Your respondent is advised that she as one of the descendants of the said Nimrod C. Ely, is entitled to a one-fifth part of one-tenth of two-thirds of the entire estate devised by the said will of the said Joseph N. Ely. ^{and bequeathed}

And now having fully answered as ^{fully as} she is advised it is material for her to answer she prays to be hence dismissed &c. And she will ever pray &c.

B. H. Sewall,
Atty for Respondent.

Rebecca Weston

Ado { Accused of
Rebecca Weston }

John & Ely Walden & Co.

Filed in open Court and
by leave thereof June the
11th 1900.

A. B. Mursey Clerk


To the Honorable H.A.W.Skeen Judge of the Circuit Court
of Lee County, Virginia:

The answer of Peter Reasor, Belle Reasor, Fanny Reasor and Cass Reasor, infants under the age of twenty-one years, by C.T.Duncan, their guardian ad litem, assigned to defend them in this suit, to a bill of complaint exhibited against them and others, in the Circuit Court of Lee County, by John Z.Ely and J.Morrison Smyth, administrators of the estate of Sarah S.Ely deceased.

The respondents, reserving to themselves the benefit of all just exceptions to said bill, for answer thereto, or so much thereof as ~~they~~ ^{are} advised that it is material they should answer, by their said guardian ad litem, answer and say:

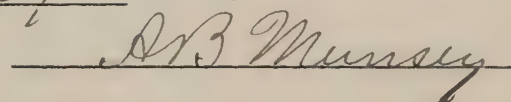
That they are infants of tender years, and by reason of their infancy, are incapable of understanding, or of taking care of their rights and interests. They therefore, by their said guardian ad litem, commend themselves and their rights and interests to the protection of the court and pray that no decree may be pronounced which will tend to their prejudice.

And having fully answered, the said respondents pray to be hence dismissed with their reasonable costs in this behalf expended, and they will ever pray, &c.


Guardian ad litem for Peter Reasor, Belle Reasor, Fanny Reasor and Cass Reasor.

Virginia, Lee County, to-wit:

I, A.B.Munsey, Clerk of the Circuit Court for Lee County, do certify that C.T.Duncan guardian ad litem for Peter Reasor, Belle Reasor, Fanny Reasor and Cass Reasor, this day personally appeared before me and made oath that the representations made in the foregoing answer are true to the best of his knowledge and belief. Given under my hand this the 20th day of July 1900.

 Clerk.

John F. Ely and
J. Morison Sargent, Advers.

vs. { Guard ad litum
answer.

Elizabeth J. Pennington
and others.

To the Honorable H.A.W.Skeen, Judge of the Circuit Court
for Lee County Virginia:

The joint answer of America Graham, Thomas Garrison and Daniel G. Simpson, Cynthia Myers, John H. Pennington and Sarah E. Myers to a bill exhibited against them in this Honorable Court by John Z. Ely and J. Morrison Smyth administrators of the estate of Sarah S. Ely deceased.

It is true that Sarah S. Ely was the widow of Joseph N. Ely deceased that the said Joseph N. Ely departed this life on or about the 11th day of December, ~~1882~~ 1882, having first made and published his last will and testament which was duly probated in the County Court of Lee County; it is further true that the said Sarah S. Ely departed this life intestate on the 12th day of April 1900; it is further true that both the said Joseph N. Ely and the said Sarah S. Ely left no issue of their bodies surviving them; it is further true that the said John Z. Ely and J. Morrison Smyth duly qualified as the administrators of the said Sarah S. Ely.

Your respondents suppose that there are such doubts surrounding the proper construction of the will of the said Joseph N. Ely and the distribution of the funds which came into the hands of the said administrators as to render proper a construction of said will or at least a direction to said administrators as to the manner in which they shall distribute the estate which came into their hands, by the Court. Your Respondents are informed that it is true that the three probable constructions of said will mentioned by the complainants in their bill each have their advocates, and that each of said views will perhaps be contended for by the different persons interest in said estate, or claiming to be interested therein.

Your respondents are advised that the construction mentioned by complainants as the third is the true construction of said will. That the testator, Joseph N. Ely, by his will gave absolutely and in fee simple all of his estate both real and personal to his wife Sarah S. Ely, and that she having died intestate said estate passes to her heirs at law who are her sister, America Graham, and the descendants of her other sister, Virginia Garrison and the children and heirs at law of

her deceased brother Tobias S. Pennington.

Your respondents are advised that the law is well settled both by the courts and text writers every where, that wherever an estate is given, whether for life or otherwise, with absolute power of control, use, disposition and alienation, either express or implied, that the devisee takes a fee, whether the estate devised be real or personal. This being the well settled principle of law, your respondents are advised that the only question to be determined is whether or not the devise and bequest in the will of Joseph M. Ely to his wife, Sarah S. Ely is coupled with the unrestrained power in her to dispose of the property. The language of said bequest is as follows: "In the first place I desire and will all the remainder of what I am possessed at my decease both real and personal to Sarah S. Ely my wife I desire that she shall have the sole use and control of it so long as she may live, and after her decease and after all her just debts and funeral expenses are paid I then desire one-third of all my estate at that time both real and personal to be equally divided between my wife's brothers and sisters if living - - - I desire and will the other two-thirds of my real and personal estate to be equally divided between my brothers and sisters, if living if not I desire the heirs of those that may have deceased before this distribution is made of my estate to draw their father's or mother's part and ~~the same~~ equally divide it between them". Your respondents are advised that this language cannot be reasonably construed otherwise than that the devisee said ~~the same~~ Sarah S. Ely had not ^{only} the power to use the property devised, but that she had the unlimited power ~~to~~ to sell it, to consume it or to do what she desired with it. The gift over, "of all my estate at that time" shows that the testator intended, notwithstanding the direction that the property was subject to her sole use and control so long as she lived, that she should have the power to dispose of it, consume it or spend it in her life time. This she could only do, being invested with the fee-simple. What might remain of said estate, that is, "all my estate at that time," was all that was to go over. This lan-

guage certainly implied an unlimited and unqualified power of disposition.

Respondent will now show your Honor that if they are mistaken in the view above taken that Sarah S. Ely under the will of her husband Joseph N. Ely, took a fee-simple in all the estate of which her husband died seised, under said will, then certainly the contention made second in the plaintiffs bill should prevail, because the testator could certainly only be held to have contemplated the partition of his own estate among the heirs of himself and his wife. Certainly he never contemplated a division of the earnings and accumulations of his wife, or any part thereof, should be divided between or in any way go to his brothers and sisters or their descendants. The injustice of such a contention is so manifest, that only to mention ^{it} is sufficient. The testators widow lived for 17 years after the death of her husband. She was industrious and frugal and her savings and accumulations were large and without question they should descend to her heirs, and to them alone.

Such a course as this does no injustice to the heirs of the said Joseph N. Ely, as they will thereby get every cent that they would have gotten, had the estate then been partitioned, and more too, because, they get it now free from any charges in her favor as widow.

Your respondents do not know the value of the estate of the said Joseph N. Ely at the time of his death, but they are advised and informed and they here assert that the said Sarah S. Ely more than doubled the personal estate which came to her hands from her husband, after his death.

~~Respondents~~ Respondents are advised that in no way possible is the said will of the said Joseph N. Ely susceptible of the ~~##~~ construction given by the plaintiffs in what they make or number their first contention.

And now having answered said bill as fully as they are advised it is material to answer it, they pray to be hence dismissed.

L. C. Duncan
J. L. Nail ³ *Counsel*
For respondents

John F. Ely et al Advers.
vs. { Answer.

Elizabeth J. Pennington et al
Answer of America Gra-
ham and others.

Filed in open court and by
leave thereof June the 11th
1900. A. R. Munsey Clerk

To the Honorable H.A.W.Skeen, Judge of the Circuit

Court of Lee County, Virginia:

The joint answer of America Graham, Thomas Garrison and Daniel G.Simpson, Cynthia Myers, John H. Pennington and Sarah E. Myers to a bill exhibited against them and the other distributees of the estates of Joseph N. Fly and Sarah S. Fly, deceased, in this this Honorable Court, by John Z. Fly and Mary P. Fly.

It is true that the said Joseph N. Fly departed this life on or about the 11th day of December, 1883, having first made and published his last will and testament, which was duly probated in the County Court of Lee County, in which said will he made his ten brothers and sisters and their heirs, which are mentioned in the said Complainants' bill the ^{devisees} ~~distributees~~ of two-thirds interest in all his lands of which he died seized, and that your respondent America Graham and the descendants of Virginia Garrison and the descendants of Tobias S. Pennington are the devisees of the other third of the real estate of which the said Joseph N. Fly died seized; and that the descendants of the said Virginia Garrison are your respondents Thomas Garrison and Daniel G. Simpson; and that your other respondents Cynthia Myers, John H. Pennington and Sarah E. Myers, together with the Complainant Mary P. Fly are the descendants of the said Tobias S. Pennington.

It is also true that the said Joseph N. Fly died seized of all the lands mentioned in the said complainants' bill for which the said complainants have filed his said title papers, but your respondents deny that the said eleven acre tract purchased by the said Sarah S. Fly after the death of the said Joseph N. Fly, from John T. Hughes is a part of the estate of the said Joseph N. Fly; on the contrary they allege and aver that the said tract of land belonged solely to the said Sarah S. Fly, and upon her death descended immediately to your said respondents as the heirs at law of the said Sarah S. Fly; and the said respondents also aver that they are the sole owners of the said Sarah S. Fly's undivided one-half interest in the 12 acre tract mentioned in said title paper of the said Joseph N. Fly.

These respondents, however, unite with the plaintiffs in the prayer set forth in their bill, that the real estate of which the said

Joseph N. Ely died seized be devided as required by said will, but that no partition in kind can be made owing to the large number of parties in interest, and they therefore pray along with the plaintiffs that a sale of all the said real estate shall be made and the proceeds thereof distributed to these respondents and others entitled thereto; that is to say, that the whole proceeds of the said eleven acre tract which was purchased by the said Sarah S. Ely from John T. Hughes, and of the one-half interest of the said Sarah S. Ely in the said twelve acre tract, be distributed among these respondent per stirpes and that one-third of the proceeds of all the other real estate mentioned in said complainants' bill be distributed among these respondents per stirpes, and that the other two-thirds be distributed among the heirs or rather the descendants, of the ten brothers and sisters of the said Joseph N. Ely.

These respondents have filed an answer in a suit brought by John Z. Ely and J. M. Smyth Administrators &c. against Elizabeth J. Pennington and others, now pending in this Court, having for its object the proper construction of the aforesaid will of Joseph N. Ely, in which case the same questions are raised concerning the said eleven and twelve acre tracts as are raised in this cause; and these respondents pray that the answer filed by them in that suit be read and considered as a part of this suit in so far as the same may be applicable to a proper understanding of the matter involved in order that justice may be done among the parties.

And now having answered as fully as they are advised that it is material they should answer, these respondents pray to be hence dismissed with their proper costs in this behalf expended.

C. T. Duncan, and
J. C. Noel
Attys for Defs.

J. Z. + Mary P. Ely

vs. { Answer.

J. M. Smyth et als.

Filed in open Court and
by leave thereof Nov
15th 1900.

A. B. Munsey Clerk

To the Hon.H.A.W.Skeen,Judge of the Circuit court for Lee County:

The joint answer of J.T.Smyth,J.A.Orr,Amanda J.Hughes,Mary E.
Cox,H,H,Ely,D,s,Reasor,W.A.J.Reasor,J,G,Reasor,Wallace Reasor,
J.M.Bailey,Amanda E.Olinger,Dora E.Olinger,David W.Smyth,C,D,Bailey,
H.C.Bailey,Rebecca Olinger,Jane S.Barker,Sallie Cecil,Rebecca R.
Cecil,Nancey E.Short,Martha Quillen,I.P.Ely,P.H.Orr,Dollie Pugh,
Charlie Smyth,Emily Newman,Elbert M.Smyth,John M.Smyth,Jr,Hiram Ely
Charles Ely,Amanda Ely,W.S.Ely,James Smyth,James Stewart,Simon
Stewart,Emmet Stewart,Mary Carter,T.P.Smyth,Emmet Ely,Sarah E.
Myers,Susan Z.Young,Joseph Ely,George W.Ely,Sarah Parsons,Lucinda
Parsons,Lettie Shufflebarger,John M.Smyth,

to a bill in **chancery** filed in this honorable court by John Z.Ely
and Mary P.Ely against them and others.

These respondents reserving to themselves all just exceptions to the plaintiffs bill, nevertheless answering say:

That they are the descendants of the brothers and sisters of Jos. N. Ely, dec'd. and that their descent from said brothers and sisters is correctly set out in the plaintiffs bill, and also the facts with reference to the ownership of the real estate in the bill mentioned, and the names and present status of the other descendants of the brothers and sisters of the said Jos. N. Ely as well as the names and present status of the brothers and sisters and their descendants of said Sarah S Ely, widow and devisee of the said Jos. N. Ely, and the facts stated with relation to the making of the will of the said Ely are also true, and it is true that a life estate in said real estate was given to the said Sarah S. Ely by the said Jos. N. Ely, and after her death 2-3rds of the same should descend, pass and become vested in these respondents and the other descendants of the brothers and sisters of said Jos. N. Ely, and 1-3rd to the brothers and sisters and their descendants of the said Sarah S. Ely.

These respondents unite with the plaintiffs in the prayer set forth in their bill that this real estate be divided as required by said will, but that no partition in kind can be made owing to the large number of parties in interest, and they therefore pray, along with the plaintiffs, that a sale of all of said real estate shall be made and the proceeds thereof distributed to these respondents and the others entitled thereto in accordance with the prayer of the bill. They say the bill states the facts with reference to the land bought

from J. T. Hughes and wife, to which the title was taken in the name of Sarah S. Ely, and these respondents say that she purchased said land with money derived from the condemnation by the Louisville & Nashville R. R. Co. of the real estate of which the said Joseph died seised, and that the purchase of the Hughes land was but a substitution for the land taken by the railroad company, and that the title was taken by her in her own name without any intention on her part of violating the express terms of the will on this point. She regarded herself, and these respondents say that in law she was, a trustee for the devisees under said will. These respondents say that there is abundant evidence to show that such was her purpose and desire, and even if it were not, they are advised that such was the effect of her re-investment derived from the aforesaid condemnation.

These respondents have filed an answer in a suit brought by John Z. Ely and J. M. Smyth against Elizabeth J. Pennington et al. now pending in this court, having for its object a proper construction of the aforesaid will of Jos. N. Ely, in which case it is possible some of the questions raised may likewise be raised in this cause, and these respondents pray that the answer filed by them in that suit be read and considered as a part of this suit in so far as the same may be applicable and necessary to a proper understanding of the matter involved in order that justice be done among the parties.

These respondents would further show unto your Honor that there are a great many other defendants in this cause having a common interest with these defendants but who are widely scattered, being mostly non-residents of this state and whose

interests would aggregate a large amount, yet to each one is comparatively small. Most of these defendants have not employed counsel and are taking no active part in the defense of this suit, each of them having no actual notice but only constructive notice thereof, but who will share equally with these respondents in the result of this litigation if the prayer of these respondents in the premises be granted. These respondents are advised that said absent defendants should be required by decree of your Honor to contribute ratably to the reasonable and necessary attorneys' fees and other charges necessary in conducting these proceedings, and they pray this be done in the final decrees in this cause.

And now having answered as fully as they are advised it is material they should answer, these respondents pray to be hence dismissed with their proper costs in this behalf expended.

*Peerington Bros.
Or & Irvine.*

John M. Smyth & Co

and ³ Answer

Mary P. Eley & Co

Filed in open Court and by
leave thereof June 11th 1900

A. B. Minsey Clerk

E. W. PENNINGTON

ROBT. L. PENNINGTON

Pennington Bros.

ATTORNEYS AT LAW

JONESVILLE AND PENNINGTON GAP VA

To The Hon.H.A.W.Skeen,Judge of the Circuit Court for Lee County:

The Joint answer of J.T.Smyth,J.A.Orr,Amanda J.Huges,Mary E.
Cox,H.H.Ely,D.S.Reasor,W.A.J.Reasor,J.G.Reasor,Wallace Reasor,
J.M.Bailey,Amanda E.Olinger,Dora E.Olinger,David W.Smyth,C,D,Bailey,
H.C.Bailey,Rebecca Olinger,Jane S.Barker,Sallie Cecil,Rebecca R.
Cecil,Nancey E.Short,Martha Quillen,I.P.Ely,P.H.Reasorrrr Orr,Dollie
Pugh,Charley Smyth,Emily ~~NEW~~ Newman,Elbert M.Smyth,John M.Smyth,Jr.
Hiram Ely,Charles Ely,Amanda Ely,W.S.Ely, James Smyth,James Stewart,
Simon Stewart,Emmet Stewart,Mary Carter, T.P.Smyth,Emmet Ely,Sarah
E.Myers,Susan Z young,Joseph Ely,George W.Ely,Sarah Parsons,Lucinda
Parsons,Lettie Shufflebarger,_____

1

To a bill in chancery filed in this honorable court by J.Morrison
Smyth and John Z.Ely,administrators of the estate of Sarah S.Ely,
deceased,against them and others.

These respondents reserving to themselves all just exceptions to the plaintiffs bill, yet answering say:

It is true, as alleged in the bill, these respondents are the descendants of the brothers and sisters of Jos. N. Ely, dec'd. Their descent from said brothers and sisters is correctly set out in the bill, and the bill also correctly sets out the facts with regard to the execution of the will of said Jos. N. Ely, and the acts done after his death by his widow, the said Sarah S. Ely, the general nature and character of the assets left by the said Jos. N. Ely at the time of his death, and by the said Sarah S. Ely at the time of her death. It is also true that the plaintiffs herein John Z. Ely and J. Morison Smith have qualified as the administrators of the estate of said Sarah S. Ely, and it is true, as respondents suppose, that there are three constructions of the will of the said Jos. N. Ely which will be insisted upon in this cause. The bill correctly states, so far as these respondents know, the names and present status of the other descendants of the brothers and sisters of the said Jos. N. Ely, and also the descendants of the brothers and sisters of the said Sarah S. Ely.

Respondents now further answering would say that they are advised, and they here charge and insist upon it, that there is but one correct interpretation of the will in dispute, to-wit: the first interpretation set out by the plaintiffs in their bill, which is that all the ^{assets} ~~notes~~ now in the hands of said administrators and which will go into their hands as such, should be disbursed by paying out to the brothers and

sisters of Sarah S. Ely, or their descendants, one-third of the net amount thereof, and to the descendants of the brothers and sisters of the said Jos. N. Ely two-thirds of the net amount thereof per stirpes, and they ask that the said personal estate be distributed upon this basis, and that the proceeds of the real estate be distributed in the same way, which, as these respondents believe and charge, must be sold and distributed rather than partitioned in kind.

Respondents would show that the testator Jos. N. Ely started ~~in~~ life as a poor, hard-working young man. Early in life he married said Sarah S. Ely, formerly Pennington. By her he received but little, if any property. She was a fit companion and helpmate to him through life. They labored hard and were economical, and the result was the accumulation of a considerable estate, as is shown by the plaintiffs bill. They had no children, and it was the desire and intention of both the said Jos. N. Ely and Sarah S. Ely for many years prior to the death of the said Joseph that his brothers and sisters should receive 2-3rds of his estate and her brothers and sisters 1-3rd of his estate per stirpes after the death of both the said Joseph and Sarah. That this was for many years the settled determination and desire of both of said parties, there is abundant evidence on all hands. There is also abundant ~~undeniable~~ evidence that if the said Sarah S. Ely had died before the said Joseph, his will would have been so made that her brothers and sisters would have received 1-3rd of ~~all~~ his estate, and his own brothers and sisters 2-3rds thereof. It was with the view of carrying out this commendable purpose, and also of giving his wife a life estate in his property,

that this will was made by the said Jos. N. Ely in 1863, 19 years before his death, when he was over 50 years of age, and his wife but a few years younger.

It was further a matter of comment and mutual understanding between the said Joseph and Sarah that as she had three brothers and sisters, or their representatives, and he had ten, the division of his estate in the shares of 2-3rds and 1-3rd respectively would still leave the advantage as to amounts received in her relatives.

The said Jos. N. Ely died at about the age of 70, in the year 1882, as is stated in the plaintiffs bill, and his wife survived him for 18 years, dying at about the age of 83, during the present year. During the 18 years that she survived after his death as well as during the 19 years preceding his death, and after he made his will, it was always her expectation and desire as expressed on innumerable occasions and is shown in numberless acts, that the spirit as well as the letter of her husband's will should be carried out, and that his brothers and sisters and their descendants should receive 2-3rds of all the estate left at the time of her death; that is, 2-3rds of all the estate, both real and personal, which she had, whether claiming the same in her own right or as life-tenant under the will of her husband. These respondents state and charge that she was a prudent, careful and economical woman and managed well the real and personal estate committed to her care by her husband at his death, and that the increment to the same was considerable, and that she added to the value of said estate a considerable amount of personal property, some of which perhaps remained in kind since his death, but much the larger portion of which had changed form

but could still be directly traceable to the personal assets left in her hands by her husband. There can be no doubt as to what the intention of the testator was, or as to the interpretation put upon his will by the said Sarah S. Ely, and that it was the earnest desire of both that the will should be construed and take effect as these respondents ask. These respondents are advised that even on the most technical construction of the said will, the interpretation here insisted upon is the only correct and lawful one, upon reading the will as a whole, that can be reached, and much more is this true when the surrounding facts and circumstances and the conditions that environed these two people are taken into view.

WHEREFORE these respondents pray that they, and those having a common interest with them, be decreed to receive two-thirds of all the estate, both real and personal, which the termination of the life estate of the said ~~Sarah~~ Sarah S. Ely has devolved upon this Court to administer. These respondents would further show unto your Honor that there are a great many other defendants in this cause having a common interest with these defendants but who are widely scattered, being mostly non-residents of this state and whose interests would aggregate a large amount yet to each one is comparatively small. Most of these defendants have not employed counsel and are taking no active part in the defense of this suit, each of them having no actual notice but only constructive notice thereof, but ~~who~~ who will share equally with these respondents in the result of this litigation if the prayer of these respondents in the premises be granted. These respondents are advised that said absent defendants should be required by de-

cree of your Honor' ~~to~~ to contribute ratably to the reasonable and necessary attorneys' fees and other charges necessary in conducting these proceedings, and they pray this be done in the final decrees in this cause. And having answered fully they pray to be hence dismissed.

Remondet Bros
Att & Coun.

J. P. Ely & Co

ans $\frac{3}{4}$ Answer of
 $\frac{3}{4}$ J. T. Smith et al

J. M. Smyth & Co Attorneys

Filed in open Court and
by leave thereof June 11th
1900. A. B. Munsey Clerk

L. W. PENNINGTON.

ROBT. L. PENNINGTON

Pennington Bros.

ATTORNEYS AT LAW.

JONESVILLE AND PENNINGTON GAP, VA.

Smith & Ely adverse
vs.
Elizabeth J. Punnington et al
and
John J. & Mary P. Ely
vs.
J. M. Smith et al

Ex parte

On motion of the plain-
tiffs these causes are hereby
brought on to be heard togeth-
er. And thereupon these
causes came on this day to
be heard upon the papers
formerly read therein, the
report of Noel & Punnington
showing that they had ne-
gotiated, sold & transferred
the lands of A. Johnson and
N. L. Johnson to the Powell
Valley Land at a discount of
3%; and the petition of
J. P. Ely, vs. H. J. Milham
adverse et al, exhibits filed
therewith, and depositions of
witnesses, and was argued
by counsel:

On consideration of all which
and for reasons appearing to
the Court, it is adjudged,

ordered and decreed that
said report of sale and
transfer of said Johnson notes
~~be and the~~ to said Farmers
Traders Bank be and the same
is hereby confirmed to said
Bank without any means
on said Hall & Pennington
or upon the estates of Joseph
H. and Sarah S. Ely; and said
Bank or any assignee of it
is hereby authorized to col-
lect said notes as they be-
come due.

And it is further adjudged
and ordered and decreed that
S. P. Ely recover from H. J.
Wilham admr. of the estate of
A. J. Ely, it and the sum of
\$30⁰⁰ with interest on \$5⁰⁰
a part thereof, from the 11th day
of Oct., 1888 till paid; and
interest on \$25⁰⁰ the residue
thereof from the 1st day of Oct.,
1889 till paid and the cost
of said S. P. Ely's petition;
and said Ely & Smith admrs, each
of the ~~1/2~~ share of the defendants
in said petition &

in the estate of Joseph N. & Sarah
S. Ely in their hands will pay
to said J. P. Ely the amount
of said recovery & costs, and
the payment of said adms.
to said Ely will forever bar
said parties to said petition
from recovering such sums so
paid from said adms. and
in the event there is not
enough in the hands of
said adms to pay said
J. P. Ely the amount of said
recovery, then said Noel &
Dunnington adms. will pay
the residue out of the funds
in their hands belonging to
said defendants in said
petition.

And it appearing to the
Court that said Ely & Smith
as adms &c of said Sarah S. Ely
died. at the March term ~~1901~~
1901 recovered from one C. L.
Hambler a judgment; and
that said Hambler has paid
on said judgment the sum
of \$100⁰⁰ and the costs of said
suit, as and for a full

satisfaction & discharge of
the same by way of a com-
promise, and it appearing to
be doubtful whether said
advers. could have collected
any of said judgment, it is
adjudged, ordered and decreed
that said compromise be
and the same is hereby confirm-
ed and ratified, and said Har-
bison discharged from paying
any further sum ~~on~~ on said judg-
ment and said advers. relieved
of collecting any further sum
thereon.

And this cause is continued.

Ely & Smith advers
vs.
E. J. Harrington & Co
and

J. G. May Jr. Ely
vs.
J. M. Sargent & Co
Drown.

Entered on Chancery
Order Book No 6 Page
549 & 550

Enter this
June 3rd 1901
at a w. H. H. H.

John J. & Mary P. Ely Compt's }
vs. } In Chancery
J. M. Smyth et al Defts }

This cause came on again this day to be heard upon the papers formerly read therein and the report of Commr. E. H. Pennington and J. C. Noel and deeds to Amanda J. Hughes and Francis M. Parsons therewith filed on the 12th day of March, 1901, and was argued by Counsel: On consideration of all which and ~~the~~ said report and deeds being unexcepted to, it is adjudged, ordered and decreed that said report and deeds be and are hereby confirmed; and that Amanda J. Hughes pay said Noel & Pennington five dollars for their services in making said deed and that said Francis M. Parsons pay to said Noel and Pennington five dollars for their services in making him a deed. And this cause is continued.

John Z. & Mary P. Ely

us } Devereaux
framing studs

J. M. Smythick at

En. Cl. B. 6 P. 333.

Enter this

March 12/1901

HAWTHORN

J. Morrison Smyth and John Z. Ely, Admsrs. &c.

Vs.

Elizabeth J. Pennington et al.

This cause came on this day to be further heard upon the papers heretofore read in said cause and the petitions of C.T. Duncan, and John C. Noel filed in said cause on the 5th day of March, 1901 in open Court and by leave thereof, and was argued by counsel. On consideration of which the Court is of opinion that the prayer of the petitioners should be granted, that ^{for} the services rendered by them ^{at a fee of 10%} on the amount decreed to the heirs of Sarah S. Ely in addition to the certain fee of \$20.00 is only a reasonable fee for the services rendered, but the exact amount not having been fully ascertained said petitioners being willing to accept ^{three hundred \$300 dollars} a certain sum, to wit: the sum of ~~\$200.00~~ and the Court being satisfied that that sum ~~is~~ less than said commission would amount to; it is therefore adjudged, ordered and decreed that J. Morrison Smyth and John Z. Ely pay to C.T. Duncan and John C. Noel, each the sum of ^{\$150.00} ~~\$125.00~~ out of the personal estate due and decreed to the heirs at law of Sarah S. Ely, deceased. Said administrators will ~~take~~ the receipts of the said Duncan and Noel for said sums which receipt ~~shall~~ constitute to them credits in the settlement of their account as administrators as aforesaid; and the decree in favor of C.T. Duncan, guardian ~~aditem~~ for the heirs of Amanda Reason, deceased for 10% on the sum found to be due to them, is by consent of the said Duncan annulled and vacated; It is further adjudged, ordered and decreed that E.W. Pennington, who is, by consent, appointed a commissioner for the purpose, will settle and state the account of said administrators. In said settlement said Commissioner will charge said administrators with all sums which came into, or by the use of reasonable diligence, should have come into their hands, and will credit them by all proper disbursements made by them for which they must produce proper vouchers. In settling said account said Commissioner will allow said administrators to retain in their hands as compensation for their services ^{to the brothers and sisters or their ~~descendants~~} 5% on the sum, or sums, going ^{brothers and sisters of this decedent} to the heirs of Sarah S. Ely, and 8% commission on the sum or sums going to the heirs of Joseph N. Ely deceased. He will report his action to some future term

of this Court. Said administrator will proceed as fast as possible to disburse the funds in their hands to those entitled thereto and in the proportion in which they are entitled to the same, except as to A.J.Ely, and they will hold the fund due to him in their hands until the further orders of this Court.

^{at abg Adams}
J. Morris on receipt
vs- } Deane

^{at abg}
Elizabeth J. Pennington
Entered on C.B.
Nov. P.P. 5714672

Enter this leave
Hawthorne
March 7th 1901.

J. J. and Mary P. Ely Comptts }
vs. } In Chancery
J. M. Smyth et al Defts }

This cause came on again this day to be heard upon the report of sale made by Commrs. E. H. Purnington and J. C. Noel filed herein on the 4th day of February, 1901, the petitions of C. J. Duncan and J. C. Noel and was argued by counsel: On consideration of all which and said report of sales being unexcepted to, it is adjudged, ordered and decreed that said report and sales be and are hereby confirmed to the several purchasers mentioned in said report, and said Purnington and Noel will seek of the funds ^{in their hands} arising from said sales ^{of this tract} will pay the costs and commissions of sales and the residue as follows ten percent of the net ~~sale~~ price of the tract commonly called the Skiraw 11 acre bottom to said C. J. Duncan and J. C. Noel and the residue of the ^{as well as one-half of the net price of the 12 acre tract} purchaser price thereof to the heirs of said Sarah S. Ely decd.

and one-third of the net purchase price of all the other lands sold they will pay per stirpes to America Mahan, Virginia Garrison's heirs, and Tobias Pennington's heirs, and the other two-thirds of said sales to the ~~same~~ descendants per ~~per~~ stirpes of the ~~the~~ brothers and sisters of said Joseph M. Ely mentioned in his will; and they will report their action to court.

And it further appearing to the court that it would be to the interest of all interested in the proceeds of the lands of A. & M. L. Johnson to see the same so the whole fund arising out of the sales of said lands can be disbursed at one time, it is therefore adjudged, ordered and decreed that said Hall and Pennington are hereby authorized to negotiate, sell and assign the two \$1764⁰⁰ lands of said A. & M. L. Johnson at a discount, so that ~~that~~ such dis-

count shall not be more than
three per cent of their face
value; and in the event of such
sale and negotiation they are
hereby authorized to assign said
bonds to the purchaser without
recourse upon themselves or
the estate of said Sarah S. or
Joseph M. Ely. And in the event
of no sale of said bonds, when
they shall become due they
will collect the same, and
disburse one-third to American
Graham, Virginia Garrison's heirs
and Tobias Pennington's heirs
and the other two-thirds to the
~~heirs~~ ^{daughters and sisters} of
said Joseph M. Ely mentioned
in his will or their descendants
per stirpes, except the share
of A. J. Ely, (Hiram's son) they
will hold till a future order
of the court

And it further appearing to the court
from said report of sale that F. M.
Parsons and Amanda J. Hughes have
paid in full the price of their purchases
it is ordered that J. C. Noel and
Edw. H. Pennington who are hereby appointed

John Z & Mary P. Ely

vs J. M. Leary
Confessing Debt

J. M. Leary the Def

Entered on Chancery
Order Book No 6
Pages 495-6

Entered this
March 5th 1901

H. A. W. Sturges

Ans. for the purpose, and who will
make to said Parsons & Hughes deeds
with Covenants of Special warranty
to the lands respectively bought by
them and report their action to Court

John Z. Ely and Mary P. Ely,

Complainants,

vs.

In Chancery,

John M. Smyth, et al.

Defendants.

This cause came on this day to be heard upon the papers formerly read therein and the answer of America Graham et al, and *General Representation Thurst* was argued by Counsel;

On Consideration of all which, and it being agreed by parties plaintiffs and defendants, and the court being of opinion that the land in the bill and proceedings mentioned can not be partitioned ^{in kind} in a practical and convenient manner, and of opinion that, instead of a partition, a sale of said property and the proceeds thereof distributed ~~among the parties~~ ^{would be beneficial to all the parties interested} interested in said land according to their respective interests therein, and the respective interests of the parties in said land having been determined in another suit ^{of} pending in this court entitled "John Z. Ely and J.M. Smyth Adms., vs. Elizabeth J. Pennington et al" (for the construction of the will of Joseph N. Ely), it is adjudged, ordered and decreed that this cause be hereafter heard with said last mentioned cause; and that E.W. Pennington ^{and J.C. Nodd} who is hereby appointed a special Commissioner for the purpose, who after having given thirty days notice of the time, terms and place of sale by written or printed notices posted at the front door of the court house, in the neighborhood of the said land, in the town of Pennington Gap, and at such other places as he may think will advance the sale of the property hereinafter mentioned, and by giving notice thereof for four weeks in the South West Virginian, and after having executed bond before the clerk of this court in the sum of Ten Thousand Dollars, conditioned as the law requires in such cases, shall proceed to make sale of the land in the bill and proceedings mentioned, either by public or by private sale, as he may think best to enhance the sale of said property in the price ^{thereof} thereof, on a credit of one and two years, except a sum sufficient to pay the costs of this suit and the commissions of sale, ^{which will be required to be paid down,} and for the deferred payments the said Pennington will ~~will~~ require the purchaser or purchasers to execute their several bonds for the deferred payments in two equal installments

With interest thereon from the date of sale, secured by approved personal security, and made payable to himself as such commissioner,
~~If they shall think best to make public sale~~^{if he} shall do so by public auction to the highest bidder at the front door of the court house for Lee County on some Court day, and if ~~he~~^{they} shall deem best to make sale by private sale then ~~he~~^{they} shall fix such place of such sale and the time thereof as ~~in his judgement~~^{in their judgement}, will enhance the price to be obtained. The said Pennington Commissioners as aforesaid may sell the said land in separate parcels if ~~he~~^{they} can obtain a better price thereby, and for that purpose may employ a surveyor for the purpose of laying off and parceling said land, if ~~he~~^{they} in ~~his~~^{their} judgement, thinks it best and proper to do so, and charge the costs thereof out of the fund so derived for the sale to be had of such land so parceled. And it appearing to the court that there is one tract which was owned jointly by Joseph Ely and Sarah S. Ely, and land ^{also} owned by Joseph N. Ely alone, and one tract bought by Sarah S. Ely in her life time and since the death of Joseph N. Ely and the deed thereto taken by her to herself, It is further adjudged ordered and decreed that the said E. W. Pennington Commissioners as aforesaid keep ~~separate accounts~~^{separate accounts} of said sales and the price obtained therefor, and take separate notes for the sale made of ~~said lands~~^{each of said interests of the above mentioned lands}. And it is further adjudged ordered and decreed that ~~any purchaser who desires to pay cash for the whole purchase made by him in lieu of the notes to be executed as hereinbefore mentioned, may do so, and said Pennington Commissioners as aforesaid is hereby authorized to receive the same instead of such notes.~~^{may} And said Pennington will report ~~his~~^{this} action to this court at the next term, and this cause is continued.

John Z. Ely & Mary P. Ely

vs ^{my} Deeds for Sale

John M. Smith vs

Entered Oct. 6

P. 479-80

Enter this Nov 17
1900.

Hawthorne

J.M.Smythe and John Z.Ely Administrators,

Complainants,

vs.

In Chancery

Elizabeth J.Pennington, et al.,

Defendants.

This cause coming on again this day to be ^aheard upon the papers formerly read herein and the report of A.M.Goins filed her^ein on the 3rd day of Oct. 1900, and the depositions and exhibits filed with said report and exceptions filed by America Graham et al by C.T. Duncan and J.C.Noel, attys, not numbered, and exceptions filed by I.P.Ely et al, by Pennington Bros and Orr and Irvine, ^{Attys} numbered 1,

2 & 3 respectively, *answer of Roland Branson, George Branson, Josephus Branson, Betty Buck nee Branson, Lydia Landon nee Branson, Rachel Landon nee Branson, Lewis at law of Nisroch Branson*
see by their attorney m. H. Ely

and was argued by counsel: Upon consideration whereof the court is of opinion that the book of the commissioner of the Revenue of the district in which Joseph Ely, deceased, was assessed for the year 1883 is prima facia evidence of the value of the personal estate of which the said Ely died possessed, but is further of opinion that the total assessment of the personal ~~estate~~ property of said Ely & for said year of \$5440.00 should not be taken as the absolute basis of a decree in this cause, but that the said sum should be increased in proportion as the last assessment against the said Sarah S.Ely in her life time, to wit, the assessment for the year 1890, at the sum of \$2750, was increased by the sale bill and inventory filed in this cause, amounting to \$10252.00 which is approximately 17.18 per cent, and ~~in this respect~~ it is adjudged ordered and decreed that the report of Commissioner Goins be and the same is hereby modified; and from a calculation it is decreed that \$6373.82 shall be taken as the true value of the personal property of which Joseph Ely died possessed, and the difference between this sum and \$10252.00, to wit, the sum of \$3878.18, is decreed upon the present status of the papers in this cause to be the increment added to the said personal estate by Sarah S.Ely, to which latter sum her heirs, as shown in this cause, are entitled, but this sum is to be decreased by \$300.00 of condemnation money and \$25.00 as road money as shown

by the report of Commissioner Goins, which leaves the sum of \$3553.18, net increment; and it is further adjudged ordered and decreed that the heirs of Sarah S. Ely are entitled to so much interest on the bonds and other evidences of debt in the hands of the administrators as had accrued at the time of her death, April ~~xx~~ 11, 1900, and which had not been included by the administrators in the inventory making up the aforesaid sum of \$10252.00; And further it appearing that the estate of Joseph Ely is entitled to 65.34 per cent of the total inventory and sale bill of \$10252.00 and the estate of Sarah S. Ely is entitled to 34.66 per cent of said total sum, it is therefore adjudged ordered and decreed that all costs paid out by the administrators here- in shall be deducted from said two estates, respectively, according to the above named proportions, and further if said sum of \$10252.00 exclusive of interest above decreed to the estate of Sarah S. Ely, shall be increased or diminished by actual collections that may hereafter be made by the administrators then the two estates shall share ratably in such increase or decrease according to the above named proportions of 65.34 % and 34.66 % respectively.

And it is further decreed that said administrators shall receive \$100.00 to pay their attorney's fees for bringing this suit for the construction of the will of Joseph N. Ely, which shall be charged as part of the costs in this cause, and said administrators shall disburse the funds now on hands or which shall be hereafter received by them to those shown to be entitled thereto by the bill and proceedings had in this cause and in accordance with this decree and former orders and decrees herein.

And it further appearing that those legatees of Joseph Ely deceased, who but for his will would be his heirs at law, are numerous and widely scattered, and portion of them infants, and another portion thereof are non residents of this State, and that only a portion of them have answered herein by their own attorneys or by guardian ad litem, and the answer of those who did answer in person prayed that the court should require contribution ^{from} and all having a common interest with those who answered in the matter ^{toward} ~~all~~ paying counsel

fees in this cause, and the court deeming such contribution proper under the circumstances of this cause since those parties who have not answered in person and also those infant~~s~~ defendants who have answered by guardian ad litem ^{shared} ~~derived~~ the benefit of this litigation ratably with those who personally employed counsel, it is, therefore, adjudged ordered and decreed that the administrators are hereby authorized to ^{deduct} ~~deduct~~ ratably from the shares of all those who would as aforesaid be heirs at law of Joseph N. Ely and who have not answered in person in this cause, which includes those infant defendants who have answered by guardian ad litem, 10% on the first \$500 payable to each person and 5% of the residue of any sums paid to them in accordance with this decree, which sums shall be proper credits in favor of said administrators in their settlements with said parties entitled to the fund in controversy herein.

And it appearing that the said parties who have answered and defended in this cause have done so by the firms of Pennington Bros. and Orr and Irvin, said Administrators are directed to pay the said attorney's fee to said two firms in accordance with the prayer of the answer above referred to, and the fees here decreed shall be in lieu of any fee of the guardian ad litem who answered for the infant defendants, heirs at law as aforesaid of Joseph N. Ely deceased, said guardian ad litem being one of the attorneys in whose favor the above provision is made.

And it further appearing that certain infant defendants have answered by C. T. Duncan their guardian ad litem, it is decreed that said administrators shall pay to the said Duncan as such Guardian ad litem the same fees as are above provided for as to certain heirs at law as aforesaid of Joseph N. Ely deceased, which shall be a proper charge against the shares of said infant defendants in favor of the administrators when paid by them. And this cause is continued.

5 1702
4 2706
8 3456

J. M. Smythe & John Z. Ely
Admsrs.

70 } Decree

Elizabeth J. Pennington et al

Entered C.D.B. 6P48/50

#6853.18

Enter this Nov. 17-1900

H. C. W. Thum

LEE CIRCUIT COURT

John Z. Ely and J. M. Smythe, Admrs.

vs.

DECREE:

Elizabeth J. Pennington, et al.

This cause having been argued by counsel before the Judge of this court in vacation at Big Stone Gap, Va., on August 6th pursuant to the decree entered herein on June 11th, 1900, and having been taken under advisement after said argument, and the court being now fully advised, it is decreed as follows:

This cause coming on this ^{The 10th of August 1900} day to be heard in vacation upon the papers formerly read herein and the depositions of witnesses taken since the decree of June 11th, 1900, and submitted at the argument of this cause on August 6th, and upon exceptions noted to various questions and answers in said depositions, and upon exhibits filed with said depositions, and the argument of counsel; the court is of opinion that it was the intention of the testator Joseph N. Ely as expressed in his will made January 20th, 1863, that ~~he~~ his wife Sarah S. Ely should have the use, control and enjoyment of all his estate, real and personal, for her life so long as she should survive him, with ^a ~~the~~ vested remainder in one-third of said estate, real or personal, as of the time of his death in the brother and sisters of his said wife or the heirs of their body per stirpes, and ⁱⁿ the other two-thirds ⁱⁿ ~~to~~ his own brothers and sisters or the heirs of their bodies per stirpes; and that the language of said will read in the light of the circumstances surrounding the testator did not vest in his wife in her life-time, and does not vest in her heirs since her death, a

fee simple in the real estate of which he died seised and title absolute to his personal property; and the court being further of opinion that the heirs of Sarah S. Ely are entitled to have the rents, profits and increments arising from said estate after the death of the testator, if the same can be ascertained. It is, therefore, adjudged, ordered and decreed that A. M. Goins, who is hereby appointed a Special Commissioner for that purpose, shall take an account and report:

First: Of what real estate Joseph N. Ely died seised, *its* nature and location, and whether or not it all remains in kind and, if not, the value of such as has been disposed of as of the time of its disposal.

Second: Of what personal property the said Ely died possessed of all kinds and description, its nature and value as of the time of the death of said Ely.

Third: The increment, if any, to the estate so left by the said Joseph N. Ely in the hands of his wife Sarah S. Ely stated as of the time of her death and the nature thereof.

He shall give notice of the time, place and purpose of his sitting by publication thereof in four successive issues ~~in~~ ^{of} a weekly newspaper published in Lee County, which publication shall be in lieu of personal notice thereof. He shall reduce to writing all the evidence ~~adduced~~ ^{adduced} before him by any of the parties, and return the same with his report, which he will make if practicable to this court at its next regular sitting; and it is further adjudged, ordered and decreed that when the amount and value of the real and personal estate so left by the said Joseph N. Ely shall be ascertained, one-third in value thereof shall be distributed to the brother and sisters ^{of Sarah S. Ely and the other two-thirds to the brothers & sisters} of the testator Joseph N. Ely as named in his said will, or the heirs of their bodies per stirpes, in accordance with

the provisions of said will. All questions not expressly passed upon herein are reserved for future consideration.

H. C. W. Skellern,

Judge of the Circuit
Court of Lee County, Va.

To the Clerk of the Circuit
Court of Lee County, Va.

John F. Ely et al's Admrs
vs } Deceit

Elizabeth J. Pennington et al's

Entered on Chey Order
Book No 6 Page 423

J. J. Ely and J. M. Smyth adms.

vs.

Elizabeth J. Huntington et al

} W Chan.

This cause came on this day to be heard upon the bill of the Complainants & exhibits filed therewith; The ^{joint} answer of J. J. Smyth et al this day filed by ~~the~~ leave of the court, the joint answer of America Graham et al, also this day filed by leave of the court, the joint answer of Fannie Johnson et al, infants under the age of 21 years by James H. Orr their guardian ad litem, the joint answer of Peter Reason et al, infants under the age of 21, by C. J. Duncan their guardian ad litem, the separate answer of Rebecca Weston, the separate answer of H. J. Milham adms. of the estate of Joseph M. Ely decd., with his will annexed, and general replication to each of said answers, and was argued by counsel: On consideration of all which and by consent of all parties appearing and answering in said cause, and for reasons appearing to the court,

from the bill of said cause & exhibits that the defendants served with process and answering bring more than thirty and represent like interest with those who ~~to~~ probably have not been served with process, it is ordered that process as to such if there be any such, be dispensed with and this cause be proceeded with as if such had been duly served with process.

And on the consent of complainants and all those appearing and answering, it is ordered that this cause be heard in vacation at Big Stone Gap, Va on August 6th, 1900, and such decision or decree by the judge of this court so entered at said time & place or at any time thereafter in vacation shall be as effective and binding as if made in term time; to which time ~~and~~ place this cause is continued.

Ely & Smyth adverso.

vs } Deane No. 1

E. J. Pennington et al

Env - on Chy. O.B. No. 1 p 406

Enter this

June 11/1900.

14 a w 01111

J. Z. & Mary P. Ely Comfils.

vs.

J. M. Smyth et al orfs

} In Chancery.

This cause came on this day to be heard upon the bill of the Comfils, and exhibits filed therewith, the joint answer of J. M. Smyth et al, the answer of Annie Johnson et al infants under 21 years of age, by J. H. Orr their guardian ad litem, the joint answer of Peter Reaser et al infants under 21 years of age by ~~J. H. Orr~~ Duncan and general replications to each of said answers, and was argued by counsel. On consideration of all which and by consent of all persons appearing as well as by the consent of the complainants, it is ordered that this cause be heard in vacation at Big Stone Gap, Va., on August, 6th 1900, and such decision or decree so entered or made by the judge of this court ^{or at any time thereafter in vacation} at said time & place shall be as effective and binding as if made in term time; to which time & place this cause is continued.

J. J. & Mary P. Ely

vs. } Brene No. 1

J. M. Smyth et al

Env- on C. C. B. Mob. p
407.

Enter this

June 11/1900.

H. A. W. S. M.

Virginia, Lee County, to wit:

This day John Z. Ely personally
appeared before me a Notary Public in and for the
county and State aforesaid and made oath that Elizabeth J. Penning-
ton, Sallie Trent, John M. Smith, Alexander Smith, Tennessee Smith, Mary
F. Parsons, Mervie O. Bartlett, Sarah M. Greenwood, Mary A. Cary, Laura
R. Parsons, William Smith, Sarah Cole, Joseph L. Smith, Sarah J. Parsons,
Sallie Turner, Fannie Lewis, Lou Anna Caywood, Jane Farley, Louisa
King, Rachel Doss, Emily Maunin, Bettie Crider, Grant Sargent, Mary
Caywood, Jackson Johnson, Sarah Collier, Emily Turner, Vesta Noethe,
James H. Smith, Cora Smith, Jackson Smith, David Smith, Joseph Branson,
Henry Branson, Sampson Branson, Richard Branson, Louisa Colly, Rebecca
Maloney, P. C. Flanary, Francis Maxwell, Elizabeth Parsons, Susan Parsons
Newton Parsons, Fannie Collier, Isaac Ely, John Ely, Helen Ely, Sarah
Smith Manervia Bowen, Lide Turner, Georgie Ann Ely, Hiram Ely,
Jackson Ely, Emily Munsey, Evelyn Fletcher, Emory Gilly, Cynthia
Hyers, Thomas Garrison, Daniel G. Simonsen, Manervia Humphrey, Rebecca
Barron, John Reaser, Peter Reaser, Fannie Reaser, Bell Reaser, and Cass
Reaser, against them John Z. Ely and Mary P. Ely

are about to institute suit in equity in the Circuit court for
the county of Lee, are non residents of the State of Virginia.

And the said John Z. Ely further made
oath that there are or may be persons interested in said suit but
whose names are unknown, and who are the heirs of William Smith deed.
Aranda Howard, deed., Chandler Branson, deed., Nitrod Branson, deed.,
Oma Hobbs, deed. Emily Moore deed., Laura Harber, deed., Elizabeth Ely
deed., and a portion of those of ~~Barbery~~ ^{Parsons} deed.,

Given under my hand this the 24 day of April, 1900.

Alfred J. Not Pub
Lee County Va

Mary P. Ely, et al.,

vs.: Affidavit for O. of P.

John M. Smyth et al.

#####

Filed April 24" 1900

A. B. Munsey Clerk

APR 24 1900

Virginia, Lee County, to wit:

This day John Z. Ely personally appeared before me a Notary Public in and for the county and State aforesaid and made oath that Elizabeth J. Pennington, Sallie Trent, John M. Smith, Alexander Smith, Tennessee Smith, Mary F. Parsons, Nervie O. Bartlett, Sarah M. Greenwood, Mary A. Cary, Laura R. Parsons, William Smith, Sarah Cole, Joseph L. Smith, Sarah J. Parsons, Sallie Turner, Fannie Lewis, Lou Anna Caywood, Jane Farley, Louisa King, Rachel Doss, Emily Maupin, Bettie Crider, Grant Sargent, Mary Caywood, Jackson Johnson, Sarah Collier, Emily Turner, Vesta Boothe, James M. Smith, Cora Smith, Jackson Smith, David Smith, Joseph Branson, Henry Branson, Sampson Branson, Richard Branson, Louisa Colly, Rebecca Maloney, P. C. Flanary, Francis Maxwell, Elizabeth Parsons, Susan Parsons Newton Parsons, Fannie Collier, Isaac Ely, John Ely, Hiram Ely, Sarah Smith Manervia Bowen, Lide Turner, Georgia Ann Ely, Hiram Ely, Jackson Ely, Emily Munsey, Evilen Fletcher, Emory Gilly, Cynthia Myers, Thomas Garrison, Daniel G. Simpson, Manervia Humphrey, Rebecca Barron, John Reasor, Peter Reasor, Fannie Reasor, Bell Reasor, and Cass Reasor, against whom John Z. Ely and J. Morrison Smith, as administrators of the estate of Sarah S. Ely deceased

are about to institute suit in equity in the Circuit court for the county of Lee, are non residents of the State of Virginia.

And the said John Z. Ely further made oath that there are or may be persons interested in said suit but whose names are unknown, and who are the heirs of William Smith decd. Amanda Howard, decd., Chandler Branson, decd., Nimrod Branson, decd., Oma Hobbs, decd. Emily Moore decd., Laura Harber, decd, Elkanah Ely decd., and a portion of those of Barbary ^{Parsons} Harber decd,

Given under my hand this the 24 day of April 1900.

Alfred W. Martin
Lee County Va

DATE RECEIVED BY THE STATE OF _____ JUL. 01 1900

good. And a better of those of Barbara Jackson good.
 One happy good. Many more good. Little better good. Kilmann Ely
 another good good. Christian Smith good. Kilmann Ely good.
 One more and another and also the same of the same of the same
 and that there is of the same of the same of the same of the same
 and the same of the same of the same of the same of the same

the country of Iraq, are not residents of the State of Arkansas, and upon no material fact in dispute in the district court record.

Copy of the report of Sarah E. Fry, Secretary

[illegible]

John Z. Ely et al, Adms.,
vs. Affidavit for O. of P.
Elizabeth J. Pennington et al.

Filed April 24th 1900
A. B. Manssey Clerk

[illegible]

CERTIFICATE OF

~~CERTIFICATE OF PUBLICATION~~
Special Comm's Notice.

I, A. M. Goins, Editor of the SOUTH-
WEST VIRGINIAN, a weekly newspa-
per published at Jonesville, Lee County,
Va., do hereby certify that the annex-
ed notice was published in said paper
once a week for four successive weeks,

commencing on the 16th day of

August, 1900

A. M. Goins, EDITOR.

FEE, \$10.00
1.00

SPECIAL COMMISSIONER'S NOTICE.

JOHN Z. ELY and J. M. SMITH,
Administrators,

Vs.

ELIZABETH J. PENNINGTON et al.

In Chancery.

In the Circuit Court of the County of Lee.

TAKE NOTICE THAT,

Pursuant to a decree in the above styled
cause, in vacation, August 10th, 1900, I
shall, on the 10th day of September, 1900,
at my office in the town of Jonesville, in
the county aforesaid, proceed to inquire
into and make the statements and investi-
gations, and report upon the matters and
things mentioned in said decree, and there-
by referred to me as Special Commissioner
in said cause.

Especially am I directed to hear evidence
and report upon the following matters:

1st, Of what real estate Joseph N. Ely
died seized, its nature and location, and
whether or not it all remains in kind, and
if not, the value of such as has been dis-
posed of, as of the time of its disposal.

2nd, Of what personal property the said
Ely died possessed, of all kinds and de-
scriptions, its nature and value as of the
time of the death of said Ely.

3rd, The increments, if any, to the es-
tate so left by the said Joseph N. Ely in
the hands of his wife, Sarah S. Ely, stated
as of the time of her death, and the nature
thereof.

I am directed by the foregoing decree
to give notice of the time, place and pur-
pose of my sitting by publication thereof
in four successive issues of a weekly news-
paper published in Lee county, which pub-
lication shall be in lieu of personal notice
thereof, and I am also directed to reduce
to writing all the evidence adduced before
me by any of the parties, and to return the
same with my report, which I am directed
to make if practicable to the court at its
next regular sitting.

All parties interested in the foregoing
proceedings will take due notice thereof
and be governed accordingly.

This August 15, 1900.

A. M. GOINS,
Special Commissioner.

Court's Notice.

~~ORDER OF PUBLICATION.~~

John Z. Ely & J. M. Smythe, Admsrs.

VS.

IN CHANCERY.

Elizabeth J. Pennington et al.

FEE \$10 ⁰⁰/₁₀₀

DEPOSITIONS.

John Z.Ely and J.M.Smythe, Admrs.,)	
vs.)	IN CHANCERY.
Elizabeth J.Pennington et al.)	

The depositions of F.B.Cox and others, taken before me, A.M. Goins, Special Commissioner in the above styled cause, pursuant to notice hereto affixed, headed "Special Commissioner's Notice", at my office in the town of Jonesville, Va., on the 10th day of Sept., 1900, the place and time designated in said notice, and on subsequent days by adjournment from day to day at the same place, up to and including Sept. 14th, 1900, to be read as evidence in a certain suit in chancery depending in the Circuit Court of Lee county, Va., and now before me as Special Commissioner for the purposes set out in the decree of said court of August 11th, 1900, wherein John Z. Ely and J.M.Smythe, Admrs., are plaintiffs, and Elizabeth J.Pennington et al., are defendants.

(See Next Page.)

SEPTEMBER 10, 1900.

Present: J.C.Noel, atty. for America Graham et al.
 " J.W.Orr & R.L.Pennington, attys. for the Ely heirs et al.
 " J.W.Orr, Guar. ad Litem for Fannie Johnson et al.

In regard to the amount of real estate owned by Joseph N.Ely at the time of his death, it is admitted by the attorneys for the parties that Joseph N. Ely owned at the time of his death what was known as the Home Place, a tract of land purchased of different ~~of different~~ parties, containing about 138 3/4 acres; also another place known as the Lower Place, being the same land that was laid off to him in the partition of the estate of his father, Joseph Ely, and which said tract is said to contain 75 acres; also said Joseph N.Ely owned jointly with his wife a small 12 acre tract, conveyed to them by G.W.Hughes and wife, and which adjoins the said home place. (See Deed Book 15, page 648). And it is admitted further, that all of said land remains in kind, except a strip containing $6\frac{24}{100}$ acres condemned for the right of way for the L. & N. railroad out of the land owned individually by the said Joseph N.Ely, for which right of way the said Sarah S.Ely received the sum of \$325.00. (See Condemnation proceedings in the County court).

..... J.C. Noel, atty.
 James W. Orr, atty.
 R.L. Pennington for Pennington Bros. attys

F.B.Cox, a witness of lawful age, being first duly sworn, deposes and says:

Ques. 1. Please state your age, residence and occupation.

Ans. 1. I am 61; I live on Dry Branch, Lee county, Va.; and am a farmer.

Ques. 2. Were you acquainted with Joseph N. Ely in his lifetime?

Ans. 2. I was.

Ques. 3. Please state, if you know, when the said Joseph N.Ely died.

Ans. 3. It is my information ~~is~~ that he died Dec. 11, 1882, and it is recorded that way in the old family bible.

Ques. 4. State, if you remember, when Sarah S.Ely his wife died.

Ans. 4. April 12, 1900.

~~XXXXXX~~ And further this deponent saith not.

F. B. Cox

Witness,
50 cts

B.M.Morgan, a witness of lawful age, being first duly sworn, deposes and says:

Ques. 1. What official position, if any, do you hold in the county of Lee?

Ans. 1. I am Clerk of the County Court.

Ques. 2. As such, are you the custodian of the records of said office?

Ans. 2. I am.

Ques. 3. Are the property books, in which the assessment of taxes on personal property is ~~never~~ entered, ~~as part of the records of your~~ ~~office~~ kept on file among the records of your office?

Ans. 3. They are.

Ques. 4. Are you, as said clerk, in possession of the property book for the year 1882, for the Rocky Station and Yokum Station assessors' districts?

Ans. 4. I am.

Ques. 5. In that book do you find Joseph N. Ely, of Dry Branch, assessed with any personal property; and if so, please state the kinds and amounts of said property, together with the assessed value thereof?

The foregoing question and any answer thereto is objected to because incompetent, irrelevant, immaterial and inadmissible.

R.L. Pennington and J.W. Orr, Attys.

Ans. 5. I do; on page 5, line 13, I find him charged with four head of horses, valued at \$250; eight head of cattle, valued at \$135; six head of sheep, valued at \$6; nineteen hogs, valued at \$30; one wagon &c., valued at \$25; farming implements, valued at \$25; one clock, valued at \$2; one sewing machine, valued at \$20; house-hold and kitchen furniture, valued at \$100; value of fire arms and weapons, \$4. The aggregate value of the foregoing is \$597. I also find on the same page and line of said book, under schedule "C", the value of notes, bonds &c. assessed at the value of \$4251 to the said Joseph N. Ely. Making a total of all personal property assessed to the said Joseph N. Ely for that year of \$4848.

Ques. 6. I will ask you to file with your deposition an attested copy of the assessment of the said Joseph N. Ely, as shown by the records of your office for the year 1882, giving the kinds, numbers and values

of all personal property so assessed to the said Joseph N.Ely. [Mark said copy "Morgan No.1"]

Objected to for the reason state in the preceding objection.

R.L.Pennington and J.W.Orr, Attys.

Ans. 6. I will file same marked as requested.

Ques. 7. As clerk of the said county court, have you in your possession the property book of the Rocky and Yokum stations^{dist}, or commissioner's district No.3, for the year 1883?

~~Ans. 7.~~ Objected to for the reasons stated in the foregoing objections.

R.L.Pennington and J.W.Orr, Attys.

Ans. 7. I have.

Ques. 8. Please read from said book the kinds, numbers and values of all the personal property with which Sarah S.Ely, of Dry Branch, was assessed for the year 1883.

Objected to for the reasons stated in the foregoing objections.

R.L.Pennington and J.W.Orr, Atty.

Ans. 8. I find on page 5, line 15, on said book, that the said Sarah S.Ely, of Dry Branch, is charged with five head of horses valued at \$225; seven cattle valued at \$100; four sheep valued at \$4; fifteen hogs valued at \$25; wagons &c. valued at \$30; farming implements valued at \$20; one clock valued at \$2; one sewing machine valued at \$20; house hold property valued at \$100; fire arms valued at \$4.

The total valuation of the property under this schedule is \$530.

I find also on the same page and on the same line of the same book under schedule "C" that the said Sarah S. is charged with solvent notes, bonds &c. of \$4910. Making a grand total under both schedules of \$5440.

Ques.9. Please file with your deposition an attested copy of said books for the year 1883, in so far as the property of said Sarah S.

Ely in concerned, and mark same "Morgan No.2".

Ans.9. I will file same marked as requested.

Ques. 10. Please file an attested copy of the inventory of the Administrators of Sarah S.Ely, as approved by the Commissioner of Accounts, now on record in your office; also an attested copy of the sale bill of the said administrators of the said Sarah S.Ely's estate, which is on record in your said office.

Values
claims
50 cts.

Same also than is above, — R. L. Pennington & James W. Orr, attys.

Ans. 10. I will file copies of the above as requested, and mark same "Morgan 3 & 4".

...*B. M. Morgan*.....

America Graham, a witness of lawful age, being first duly sworn, deposes and says:

Ques. 1. Please state your age and residence.

Ans. 1. I am 70 years old, and live near Pennington Gap, Va.

Ques. 2. Were you acquainted with Joseph N. and Sarah S. Ely, the parties mentioned in this suit, in their life time

Ans. 2. I was.

Ques. 3. Are you a relative of either one of them; and if so, which?

Ans. 3. I was a sister of Sarah S. Ely.

Ques. 4. Where did Joseph N. and Sarah S. Ely reside in their life time?

Ans. 4. Since they went to house-keeping they resided on Dry Branch, Lee County, Va., Rocky Station, Dist.

Ques. 5. In the year 1882, did any other Joseph N. Ely live on Dry Branch, in this county?

Ans. 5. None that I know of.

Ques. 6. In the year 1883, and from then on up to this time, did any other Sarah S. Ely live on Dry Branch, this county?

Ans. 6. None that I know of. There were other Sarah Elys, but I do not know as to the letter in the names.

Ques. 7. Did you know any thing about the household and kitchen furniture of Joseph N. Ely at the time of his death?

Ans. 7. I did.

Ques. 8. Were you at the sale of Sarah S. Ely after her death?

Ans. 8. I was.

Ques. 8. State whether the property ~~was the same that was there at the time of the death of Joseph N. Ely~~, I mean the household and kitchen furniture, was the same that was there at the time of the death of Joseph N. Ely?

Ans. 9. My recollection is that it was pretty well the same, with the exception of a set of silver knives and forks.

Ques. 10. Did Sarah S. Ely in her lifetime sell any of the household and kitchen furniture left by Joseph N. Ely at the time of his death?

*Witness
claims
5-0-02*

Ans. 10. None that I ever knew of, unless it was an old stove. I don't think she ever sold any of it off.

~~Ques. 1. Do you mean to state from your recollection of the property~~ Cross-Examined.

Ques. 1. Do you mean to state from your recollection of the property which Joseph N.Ely had at the time of his death that it was the same as that left by his widow Sarah S.Ely, with the exception mentioned, or is your statement only an opinion or belief that it was the same?

Ans. 1. ~~From~~ From being at the place before and after his death, and at the time of her death, and observing the property about the household, it looked to be about the same.

Q And further this deponent sith not.

America Graham

Mrs. Mary P.Ely, a witness of lawful age, being first duly sworn, deposes and says:-

Ques. 1. State your age and residence.

Ans. 1. I was 49 last month; I live near Pennington Gap, Lee ^{con}ty.

Ques. 2. Were you acquainted with Joseph N. and Sarah S. Ely in their life time?

Ans. 2. I was.

Ques. 3. How close did you live to Joseph N.Ely at the time of his death?.

Ans. 3. About a mile and a half.

Ques.4. Were you acquainted with the household and kitchen furniture of Joseph N.Ely at the time of his death?

Ans. 4. I ~~did~~ *did*.

Ques.5. Did you know the household and kitchen furniture that was sold at Sarah S.Ely's sale?

Ans. 5. I did.

Ques.6. State whether the property that was sold at her sale was the same property, or practicably the same, that was there at the time of the death of Joseph N.Ely?

Ans. 6. It was practicable the same; some things had given out and had been replaced.

*Witness
50 cts*

Ques.7.Please state such things that you know of that had been replaced.

Ans. 7. I remember of a ⁺sove, some dishes, water vessels, made some bed clothing and one bed--I do not remember all. I remember a set ~~of knives and forks~~ of knives and forks and a butter knife. This was the set of knives and forks that was bought by Filmore Litton at the sale.

Ques.8. State what you know about the number of live stock, the quality and kind left by Joseph N. Ely at the time of his death, and what became of the same.

Ans. 8. There ~~were~~ three ^{horses} at the time of his death that I remember of, one of these was a black mare, which was kept by Sarah S. Ely up to the time of her death and sold at her sale to Emmett Cox; ~~there~~ was a young bay mare which was sold by Sarah S.Ely to my brother John H.Pennington; there was also a roan horse. These are all the horses that I remember of.

~~And further~~

Cross-Examined.

Ques 1. You state in your examination in chief that Mrs. Ely made some bed clothing and one bed that was not ~~on~~ ^{on} hand at the time of the death of Joseph N.Ely, do you know of Mrs.Ely giving to any one any beds or bedding after the death of Joseph N.Ely?

Ans.1. I do not know of my own knowledge, but I have heard in the neighborhood that she gave Robt.L.Graham's wife a bed and bed clothing and some things, but I never heard her say so.

The above answer in so far as it states what the witness heard talked of in the neighborhood, is objected to, because hearsay evidence and irrelevant.

J.C.Noel, Atty. &c.

Re-Examined.

Ques. 1. State whether or not Robt.L.Graham's wife was not raised by Mrs.Sarah S.Ely?

Ans. 1 She was a little girl at the time she went there and she raised her up to the time of her marriage, and treated her as one of her family, and that is the reason that I supposed that she gave her the bed, ~~the~~ and I had heard others say that she had given her the bed, and the bed was the one that Mrs. Ely had made.

And further this deponent saith not.

Mary P. Ely

The copies requested to be filed by B.M.Morgan marked "Morgan 3 & 4" ^{are} now filed, to which the following exception was made:

The copies marked "Morgan 3 & 4" are excepted to as incompetent, and inadmissible, ^{also because} and not tending to prove the issue, the sale being on time to Jan. 1, 1901.

R.L.Pennington and J.W.Orr, Attys. &c.

Hram Ely, a witness of lawful age, being first duly sworn, deposes and says:

Ques. 1. State your age. residence and occupation.

Ans. 1. I am 53; live at Tide, Va.; and am a farmer.

Ques. 2. Were you acquainted with Joseph N.Ely and his wife Sarah S.Ely in their lifetime?

Ans. 2. I was.

Ques. 3. Did you know any thing about the live stock and any personal property of Joseph N.Ely at the time of his death?

Ans. 3. I knew in part, I can't say I knew all about them.

Ques. 4. Did you know the live stock, such as horses, cattle, sheep, hogs &c?

Ans. 4. I knew of ^a black mare, a yellow mare, and a gray mare, and my impression is that there was also a yearling or a two year old bay filley there. The cattle I do not remember, except a yoke of steers. I remember some hogs but I do not know how many.

Ques. 5. State what you know about what became of the horses?

Ans. 5. The gray mare died, the yellow mare James Spangler brought to Jonesville and swapped her off, the horse that Spangler got ~~that mare~~ was sold by Sarah S.Ely for \$40. Spangler was staying with Mrs.Ely at the time. The black mare Mrs. Ely kept until Mrs.Ely died, and she was sold at the sale. The bay filley she kept up to about a year before she died and sold her to John H.Pennington.

~~and~~ Mrs. Ely sold the steers, but I do not know who she sold them to or what she got for them.

Ques. 6. Do you know any thing about the other personal property left by Joseph N. Ely at the time of his death?

Ans. 6. I know something about it.

Ques.7. Were you present at the sale of Sarah S.Ely's property after her death?

Ans. 7. I was.

Ques.8. I hand you an attested copy of the sale bill of Sarah S.Ely's property, please point out and name such articles as were owned by Joseph N.Ely at the time of his death, together with the name of the purchaser, and the amount for which said articles sold.

Am Objected to as incompetent and inadmissible.

R.L.Pennington and J.W.Orr, Attys.

Ans. 8. I see on said sale bill the following articles that were owned by the said Joseph N.Ely at the time of his death: one box of old irons, burchased by R.W.Orr for 10¢; three boxes of old irons, part of them I have no doubt were there at the time of his death, sold to F.B.Cox for 80¢; one loom and fixtures sold to F.B.Cox for 65¢; one large spinning wheel bought by same for 50¢; warping spools bought by same for 20¢; one black mare sold to Emmett F.Cox for \$18.25; one claw hammer &c. sold to F.B.Cox for 10¢; three dishes and butter plate sold to F.B.Cox for 50¢; pitcher and tumblers to Emmett F. Cox for 36¢; one whetstone sold to F.B.Cox for 10¢; one lot of ~~h~~hovels and mattock sold to John J. Carter for 5¢; three ~~hells~~ ^{hells} and two reahooks sold to James S.Parsons for 15¢; three old mowing ^csythes sold to F.B.Jessee for 60¢; one box of horse ~~h~~hoeing tools sold to F.B.Jessee for 65¢; one small spinning wheel sold to F.B.Jesse for \$1.35; old hames, chains and straps sold to same for 20¢; three old hay forks sold to same for 90¢; one ~~b~~ brass kettle sold to same for \$1.45; one cradle and ^csythe sold to John Z.Ely for \$2.75; one bed and bed sted sold to same for \$14; one pare of balances sold to same for \$1.60; one rifle gun sold to same for ~~\$2.80~~ \$2.80; one bed and sted sold to John H.Pennington for \$18.25; one picture sold to same for \$1.00; one reel sold to John T.Hughes for 30¢; one lounge bed to John T.Hughes for 50¢; one mirror ~~for~~ to J.T.Hughes for 15¢; one doz. silver spoos to T.M.Smith for \$1.72; one pot &c. sold to J.M. Smith for 15¢; one baker and lid sold to Joseph Ely for 30¢; one other baker and lid sold to same for 25¢; one table and cloth sold to Joseph Ely for 25¢; one barrel sold to Hiram H.Ely for 20¢; one chest to same for \$2.40; one clothes wire and dog irons to same for

45¢ and 75¢; two bee stands to Chas.Short for \$7.20; two bee stands to W.T.Gilly for \$6.15; ~~two~~ one blanket sold to E.R.Garrison for \$1.60; one bed and sted sold to same for \$7.50; one Bible sold to E.R.Garrison for 75¢; one bed and sted sold to Geo.W.Smith for \$10; plow gears and steelyards to E.R.Garrison for 50¢ and 30¢; one table cloth ~~and expists~~ sold E.P.Garrison for 50¢; one bed and sted sold Thos.Johnson for \$11.00; three augres sold to Thom.Johnson for 65¢; one wagon to Creed Gilley for \$17.15; one chest to A.M.Olinger for 85¢; eight chairs and sewing machine to same for \$2.55 and \$13.50; one safe and top to same for \$8.60; one harrow to same for \$3.00; tow counterpains to M.F.Litton for \$2.85; one dozen bags to same for \$1.20; tea cups and saucer and tumblers sold to J.G.Reason for 25¢ and 20¢; shovel and mattock and seive sold to N.S.Cox for 35¢ and 45¢; one hand saw to same for \$1.10; three old bells and two reep hooks sold to Geo.Ely for 10¢; two wedges sold same for 20¢; one cradle and scythe to A.J.Ely for 95¢; four old bridles to same for 35¢; one bed quilt sold same for \$2.05; sythe, cradle, snathe sythe sold to Elbert Myres for \$1.50; three augres and chisel to Henry Jackson for 50¢; one half-bushel sold to A.J.Reason for 20¢; one pot and wash tub to Richard W.Ely for 70¢; andirons, trunk, five chairs sold to R.W.Ely for 21¢, 54¢ and 55¢; one half bushels and two sacks sold S.T.Coldiron for 75¢; one hand saw to J.P.Kelly for 10¢; two bed quilts to Tom.Lunsford for 30¢; old kettle and cubbord to James H.Ely for \$1.10 and 10¢; 10 hoes and grind stone, 47 ¢; Cutting knife, one box, 25¢ Robert M.Smith; Pickle stand and 4 quilts to Susan Smith, \$4.87; Tone Williamson, 3 bee stands \$8.80; 1 pr. of old gearing, William H.Wax, 23¢; old plow and stock to Alex.Carnes, 50¢; chain and double trees \$1.50, to S.W.Olinger; one blanket, baker and lid to Henry Myres for \$1.30 and 10¢; counterpain and brass kettle to M.E.Orr for 60¢ and 35¢; four sheets to W.M.Bailey for 65¢; four sheets to D.S.Reason for 85¢; two chairs, + cubbord to Geo.H.Myres for 60¢ and \$3.40; one sausage mill to same for 70¢; one quilt to Sarah E.Myres for \$1.40; two chairs to F.F. Belcher for 55¢; one clothes brush to D.H.Howard for 30¢; sheep shares to Geo.Smith for 60¢; one small brass kettle Sarah A.Ely for 25¢; table and pan to same for 20¢; one cross-cut saw to John H.Ely for 35¢;

saddle bags to James Spangler for \$2.15; two jugs to L.B.Ely for 10¢; fire shovels to Phoebe Graham for 17¢; baker &c. to Henry Myres for 10¢; pillow slips, blanket to E.I.Stewart for 15¢ and 15¢; one sad-iron to Jas.P.Ely for 10¢; buckets, pans, cups and knives to L.W.Myres for 15¢ and 50¢; one tray to Louise Ely, 20¢; clock same, ~~25¢~~ \$1.00; clock \$1.00 and chairs 5¢ to same; table to H.G.Ely, 10¢; window curtains to W.I.Yeary, 10¢; pillow slips to same, 16¢; one dish, cups and saucers to Lee Gibson, 20¢ and 15¢; salt set to H.B.Graham, 5¢; one mirror to Sarah A.Ely, 12¢; dish and sugar bowl, Sam R.Cox, 15¢; plates, bowls and dish to John B.Ely, 12¢; four pales to J.M.Smith for 21¢; one churn to John Kirk, 80¢; table to same. \$1.45; sifter to Mary Pennington, 10¢; hackel and bucket to Tennessee Smith, 10¢; tubs to Louise Ely, 10¢; satchel to Jane Ely, 15¢; book to W.S.Ely, 10¢; wool cards and shares, A.H.Zion, 5¢ and 40¢; six pillow slips to J.M.Smith, 38¢; picture and flax to J.Z.Ely, 5¢ and 20¢; table to Sarah A.Ely, 95¢; candle moulds to F.B.Cox, 6¢; plow beam and handles to I.P.Ely, 25¢; lounge bed, tick and quilt to Geo.Peters, \$2.25; plates to Chas.Ely, 5¢;

Ques. 9. Please point^u out, and call from said sale bill such articles sold at said sale which were not owned by Joseph N.Ely in his lifetime, together with the price paid, and the name of the purchaser thereof.

Ans. 9. First red cow to Robt.W.Orr, \$45; ~~two~~ bacon hams 50lbs to same, \$6.37; two bacon hams same, 39lbs, \$6.25; two crocks and lard to F.B.Cox, 10¢; coffee boiler and cup to same, 23¢; one glass lamp to Emmett Cox, 15¢; one bacon side 44lbs. to F.B.Cox, ^{\$6.25} ~~\$5.28~~; one bacon ham 26 lbs. to same, \$3.31; 25 lbs to same, \$2.38; fifth lot of 25 bu. corn to same, \$17; balance of corn in large crib to same, \$8.45; second red cow to John J.Carter, \$31.30; 98 lbs flower to James S.Parsons, \$2.20; 49 3/4 lbs. bacon to same, \$6.35; 47 1/2 lbs. side bacon to same, \$5.94; blacking brush to Jeff B.Jessee, 5¢; one bucket to same, 70¢; soap to J.Z.Ely, \$1.45; honey to same \$4.35; three yds. of flannel to same, 60¢; bucket to same, 12¢; soap to same, \$2.65; seed sower to same, 50¢; syringe to same, 25¢; corn planter to J.H.Pennington, 40¢; hay stack to J.H.Pennington, \$11; sled and pailings to same, 26¢; ceiling to J.T.Hughes, \$1.75; cross-

tie wood to same, 30¢; shucks to same, \$1.20; 55 lbs. bacon to same
 \$6.60; 25 lbs. lard to same, \$2.50; eight and one-twenty-eighth
 bu. of corn to same, \$5.09; soap to J.M.Smith, 40¢; molasses to same,
 36¢; jelly to same, 10¢; 5 bu. wheat to Joseph Ely, \$3.95; 15 bu.
 wheat to same, \$12.15; boards to same, \$6.35; shingles to same, \$2;
 50 lbs. lard to same, \$4.75; vinegar to Hiram H.Ely, \$1.00; 47 lbs
 bacon to same, \$5.64; 26 lbs hams to same, \$3.25; 14 11/14 bu. corn
 to same, \$8.87; 30 doz. oats to W.T.Gilley, \$5.70; 14 bu. shattered
 corn to same, ^{\$5.04} \$5.04; gray mare and colt to M.K.Grayham, \$82.50; gray
 horse to J.H.Grayham, \$76.50; third red cow to Fred P.Brooks, \$25.60;
 9 hogs to J.H.Wilson, \$32.30; ~~apple butter to same, \$1.00; four hens and chickens same, \$1.35;~~
 two bed covers to C.E.Johnson, \$1.75 and \$1.05; 185 lbs. chickens
 to Bailey and Feltner, \$10.64; 2 quilts to E.R.Garrison, \$1.80;
 apple butter to same, \$1.00; four hens and chickens same, \$1.35;
 side of bacon 47 lbs. to same, \$5.64; 17 bu. corn to same, \$7.30;
 pistol to same, \$1.05; 42 doz. oats to Tom Johnson, \$8.40; 5 table
 cloths to same, \$1.68; wood to Creed Gilley, \$3.55; 25 bu. corn to
 same, \$16.75; Oliver plow to Ad.M.Olinger, \$6; side saddle to M.F.
 Litton, \$13.50; silver knives and forks to same, \$1.80; cook stove
 and vessels to J.G.Reason, \$13.60; 25 bu corn to Tennessee Smith,
 \$17.50; 55 lbs. of bacon sides to A.L.Tritt, \$7.10; 161 lbs. bacon
 sides to Chas.Garrison, \$20.12; 51 lbs. bacon sides to Tenn. Smith
 \$6.38; 42 lbs bacon sides to I.P.Ely, \$5.25; 24 lbs ham to same,
 \$3.06; one chamber to same, 15¢; one table cloth to same, \$1.10;
 25 bu. corn to J.P.Kelly, \$18.75; 25 bu. corn and 25 bu. corn to
 W.M.Stewart, \$34.75; 5 bu. potatoes to Jas.P.Ely, \$2.50; 4 hhovels
 to N.S.Cox, 60¢; frying pan to Geo.Ely, 35¢; one lamp to Geo.W.Ely,
 20¢; two padlocks to A.J.Ely, 12¢; three joints stove pipe to Henry
 Jackson, 25¢; basket to A.J.Reason, 60¢; corn planter to R.W.Ely,
 25¢; seed and broom to J.P.Kelly, 3¢ and 5¢; soap to Thom.Lunsford,
 \$1.35; sow to same, \$5; double plow to R.W.Smith, \$1.65; wheel bar-
 row to Teme Williamson, \$1; one heifer to G.W.King, \$15.30; one
 plow and stock to John Rivers, \$1; honey to Chas.Wahome, \$1.65;
 eight filled fruit cans to H.F.Kilburn, \$1.20; two quilts to Joe
 Brewer, \$1.25; two blankets to Z.M.Cecil, \$4; two baskets to D.S.

Reasor, \$1; saddle blanket to Geo.H.Myres, 40¢; 16 yds domestic to J.D.Russell, ^{\$1.05-}\$1.05; large spoon to Jane Trett, 12¢; one slop bucket to James Spangler, 18¢; one skillet, tea cups and saucers to Mary Kelly, 10¢ and 65¢; bread and pie pans to Phoebe Graham, 11¢; preserve and desert dishes to same, 21¢; one pair check lines to Henry Myres, \$1.55; brooms to James P.Ely, 10¢; yarns, bottles &c. to L.W.Myres, 30¢; umbrella to same, 18¢; dipper to Louisa Ely, 5¢; one padlock to same, 10¢; lantern and 25 lbs. lard to H.G.Ely, 15¢ and \$2.50; 24 doz. oats to same, \$4; plates to L.M.Zion, 36¢; lard to S.L.Parson, 25^{cb-}¢; two glasses of jelly to H.C.Ely, 15¢; lamp to same, 25¢; book to same 15¢; oats to same 25¢; spoon-holder to Bettie Reasor, 10¢; baking powders to Sarah A.Ely 12¢; two bacon joints 26¢, A.L.Tritt; Soap, ropes and seven bushels of corn to J.M.Smith 11¢, 05¢, \$4.55; two baskets to Add M.Olinger 70¢; hand towels to A.H.Zion, 30¢; oil and paint to J.M.Smyth 20¢, 15¢; whip, stove wood to J.P.Hughes, 10¢, 25¢; oats corn and hay, to F.B.Cpx, \$2.22; candles, brooms to Creed Gilly 10¢, 05¢; 41 doz. oats to Harvey Barton \$6.83; one sack to Wm.Snaveley 10¢.

The other things mentioned in the bill of sale not itemized in my answers to this and the preceding question I cannot say whether they were owned by Joseph N.Ely in his life time or not.

Ques 10. In your answer to question 4 you say that you do not remember the cattle except the yoke of steers owned by Joseph Ely at the time of his death, please state now after thinking over the matter whether you ^{have} had your memory refreshed concerning any of the cattle owned by Joseph N.Ely at the time of his death; and if so, state what other cattle he owned that you remember?

Ans. 10. I remember ~~that~~ ^{to} one cow that he owned at his death was given by Sarah S.Ely Robert Graham's wife.

Ques.11. Please state what you consider a fair cash value for the cow you speak of which was given to Robert Graham's wife, at the time of Joseph N.Ely's death.

Ans.11. I think it would have been worth \$30.00.

Ques.12. Please state what you consider a fair cash value for the yoke of cattle that you have spoken of at the time of the death of

Joseph N.Ely?

Ans.12. I think they could have been sold at that time for \$120.00

Que.13. Please state what you consider a fair cash value per head for the sheep owned by Joseph N.Ely at the time of his death?

Ans.13. I would consider them worth \$2.00 per head.

Ques. 14. Please state what you may recollect about the roan horse spoken of by Mary P.Ely in her deposition in this cause?

Ans.14. My recollection is that said horse was disposed of by Joseph N.Ely before his death, but I might be mistaken in this, but if the horse was there at the time of Joseph N.Ely's death I would consider him worth from \$75.00 to \$80.00.

Ques.15. At the time the bay mare spoken of by you was traded to John H.Pennington by Sarah S.Ely, what would you consider to be a fair cash value for her?

Ans. 15. From \$25.00 to \$30.00.

Ques.16. Judging from your recollection of the bay mare at the time of Joseph N.Ely's death, what would have considered a fair cash value of her at that time?

Ans.16. About \$50.00.

Ques.17. State whether you remember any other personal property at the time of his death that came into the hands of his widow Sarah S.Ely, which has not been mentioned in your deposition; and if so state what it was and all you may know about it?

Ans. 17. There ~~was~~^{were} some hogs that came into her hands at his death, but I do not know how many. I know of no other personal property.

Ques. 18. Judging from your recollection of the hogs spoken of by you in the above answer, what do you consider would have been a fair average cash value per head?

Ans. 18. I would say \$2 per head.

~~xxx~~

Cross-Examination.

Ques. 1. ~~Was~~^{Were} the ~~more~~^{more} or less personal property on hand at the time of Joseph N.Ely's death or at the time of Sarahs S.Ely's death?

Objected to because the witness has already pointed out from the sale bill all the personal property owned by Joseph N.Ely at

the time of his death which he has any recollection of that remained in kind up to the death of Sarah S.Ely, except the cattle, horses, hogs and sheep mentioned by him in other parts of his deposition, and has also pointed out from the sale bill various other articles which Sarah S.Ely had at the time of her death which did not belong to Joseph N.Ely in his lifetime, and for the further reason that the question is indefinite, and misleading, specifying neither number or value, and making no distinction of a consumable and perishable nature and such as are capable of being perpetuated and returnable in kind, the law being that a life tenant acquires an absolute property in all personalty of a consumable nature and which are not capable of being returned in kind.

J.C.Noel, Atty. &c.

Ans. 1. If you do not mean money, notes, bonds &c., then I will say at the time of her death there was not as many horses, sheep, hogs ~~xxxxxxx~~ cattle &c. as there was at the time of his death; other things was about the same.

Ques. 2. Previous to the death of Joseph N. Ely did Sarah S.Ely own any property of a personal nature that you know of in her own right?

Ans. 2. If she owned any property I have no knowledge of it.

Ques.3. With what funds if you know, or if you heard Mrs.Ely say, did she make the purchase of the land which she purchased from John T.Hughes and wife?

Ans. 3. ^{She} Some time after she purchased the land, I had a talk with her; we were talking about money; she said she had had some gold there in the house which my uncle had left there, and that she had thought that she would just keep that money, but getting afraid that some one would rob her, ^{she said} ~~she said~~ that she put the gold in to the land; that the land was close and convenient for her, and that when she died it would be there and that no one could steal it or carry it away. She did not tell me how much of the gold there was.

~~xxxxxxx~~

Re-Examination.

Ques. 1. You state in your cross examination that there was more live stock at the time of the death of Joseph N.Ely than there was there at the time of the death of Sarah S.Ely, and that the other

things was about the same, please state whether you made this statement from your recollection alone, or from the amount of property assessed to Joseph N. Ely for the year in which he died, as shown by the property book on file in the clerk's office?

Ans. 1. I speak from the assessor's book.

Re-Cross-Examination.

Ques. 1. The statement you made in your examination in chief, that certain property mentioned in the sale bill belonged to Joseph N. Ely at his death and certain other property did not belong to him, is made upon your recollection of the property, is it not, and you do not mean to state, do you, that there was no ^{other} property left by Joseph N. Ely at his death which is not mentioned in the sale bill?

Ans. 1. I only speak of my recollection; I do not mean to state that ~~that~~ the sale bill contains all the property that he left, but I know of no other property except what I have mentioned in my deposition.

And further this deponent saith not,

Hiram H. Ely
.....

Mary P. Ely, re-called and states as follows:

Ques. 1 You heard the deposition of Hiram H. Ely in answer to questions 8 and 9 of his examination in chief, and saw him point out and call from the sale bill of Sarah S. Ely's estate such things as was owned by Joseph N. Ely in his lifetime and at the time of his death, and such things as was sold at said sale that did not belong to Joseph N. Ely in his lifetime, did you not?

Ans. 1. I did.

Ques. 2. Please state whether your recollection of this property sold at said sale corresponds with the answer to the said Hiram H. Ely?

Ans. 2. It does; I think his answers were correct. There are a few other things mentioned on said sale bill not mentioned by him, such as bags, nails, and other small articles that I do not remember whether Joseph N. Ely owned in his lifetime or not, but my best judgment is that he did own the majority of said articles, some of the articles he did not own.

And further this deponent saith not,

Mary P. Ely

*Witness
claims
two days
\$1.00*

*Witness
50 cts.*

John Z.Ely, a witness of lawful age, being first duly sworn, deposes and says:

Ques.1. Are you one of the administrators of Sarah S.Ely?

Ans.1. I am.

Ques. 2. Please state whether the tax receipts of the personal property of Joseph N.Ely for the year 1882 and the tax receipts of the personal property of Sarah S. Ely from 1883 up to 1899, inclusive, came into your possession as said administrator, and if so, state what you have done with the same?

Ans. 2. They did, and I filed them with my deposition in this cause, and they are now a part of the exhibits, on file with the exhibits in this cause, and to which I refer for all purposes.

Ques. 3. In the sale bill of the personal property filed by you you report the rent of a field near garden to Robt.W.Orr, for \$28.50; please state whether said field at the time of renting was either in grass or under cultivation?

Ans. 3. It was under cultivation, and was put under cultivation during the lifetime of Sarah S.Ely.

Ques. 4. You also report the rent of Mulberry field to John Z.Ely for \$6.50; please state whether said field at the death of Sarah S. Ely was in grass or in cultivation?

Ans. 4. It was in clover grass, but not a great deal on it and I used it for pasture.

Ques. 5. You report rent of graveyard field to John H.Pennington for the sum of \$16; please state whether this field at the death of Sarah S.Ely was in grass or under cultivation?

Ans. 5. It was in nothing.

Ques. 6. You report rent for pasture on Big Hill to John T.Hughes for \$2; please state whether this land was in grass or under cultivation.

Ans. 6. I was only a waste field.

Ques. 7 You have reported rent of garden to James P.Ely; was this garden in cultivation at the time of her death?

Ans. 7. It was.

Ques. 8. You report rent to Creed Gilley for \$3.00; please state whether the land ~~rented~~ to him was in grass or cultivation?

Ans. 8. It was in grass.

Ques. 9. You report rent for one-half Hughes field to J.B. & L.B. Ely for \$25; please state whether this land was in grass or under cultivation?

Ans. 9. It was under cultivation; that is, the land was broken up and the corn planted;

The garden mentioned before was broken and partially planted, such as onions, irish potatoes, beets and tomatoes. The field near the garden rented to R.W. Orr had been broken ~~and partially harrowed~~

Ques. 10. Please state whether ^{you} ~~or~~ were acquainted with Joseph N. Ely in his life time?

Ans. I was.

Ques. 11. State what you know of the cattle which he had on hands at the time of his death, and their kind and value?

Ans. As I remember he had 3 cows, valued at about \$45 for one, another at \$31.60, and the other at about \$25.00; He had two steers, 2 yr. old, my father paid her \$20.00 each for them, he had a yoke of steers, and they were worth \$110.00, and this is all I remember.

Ques. 12. Do do you know any thing about any money being loaned by Joseph N. Ely to William Pennington and about Sarah S. Ely having to bring suit for the money after the death of Joseph N.?

Ans. 12. I do know that he loaned him some \$250, and I know that she brought suit for the recovery of the money; the money was never collected.

Ques. 13. I hand you an attested copy of judgment of Sarah S. Ely vs. Wm. Pennington et al, and a copy of fi. fa. that was issued on the judgment, both of which I ask you to file with your deposition in this cause, marking same "Judgment and Fi. Fa".

Ans. 13. I file said papers marked as requested.

Ques. 14. State whether or not Wm. Pennington was not on the note executed to Joseph N. Ely by the said Wm. Pennington? State first if you know what has become of said note?

Objected to: The foregoing questions and answers in regard to the Wm. Pennington debt ^{is objected to,} because said enquiry is immaterial and irrelevant, and because the witness is incompetent to state the fact inquired of, the records of the court and the pleadings of the cause

being the best evidence of what they contain.

R.L.Pennington, Atty. &c.

Ans. 14. I do not know what has become of said note; Elk. Pennington was on the note, as he told me.

Cross-Examination.

Ques.1. State, if you know, whether Sallie Ely at the death of her husband had any property of a personal nature in her own right?

Ans. 1. If she ever had any I never heard of it; I know nothing of my own knowledge.

Ques. 2. If you know, state with what funds Sarah S.Ely purchased the land which she got of John T.Hughes and wife?

Ans. 2. She told me that she was paying for it out of the money of Joseph N. Ely.

Re-Examination.

Ques.1. Did she tell you with what kind of money she paid?

Ans. 2. She did not.

Ques. 2. Did she not tell you that she was paying for this land with money that ~~she~~ she got out of the railroad?

Ans. 2. No; she told me that she was going to pay for the land out of Uncle Joe's money.

Ques.4. Then she did not tell you that she had paid for it out of his money?

Ans. 4. No, she did not, but had only contracted for the land at that time.

Ques. 5. When you had this conversation with her about her buying the land you was owing her for borrowed money, was ~~she~~ not, for which she held your note, and she was wanting to collect from you what you owed her?

Ans. 5. I was owing her and she was wanting a part of the money.

Ques. 6. How much did you pay her?

Ans. 6. I paid her over \$100.

And further this deponent saith not.

..... John T. Ely.

Wilkinson
\$1.00

B.M.Morgan, ~~the~~ witness previously on the stand, re-called for cross-examination, states as follows:

Ques. 1. Exhibit (Morgan # 1) filed with your deposition in chief shows that Joseph N.Ely was taxed with \$4848 of personal property for taxation for the year 1882, and exhibit (Morgan #2) shows that ~~xxxxxxx~~ Sarah S.Ely was taxed with \$5440 of personal property for taxation for the year 1883; do you know whether this was all the property of a personal nature owned by each of these parties at the ^{time} of said taxation?

Ans. 1. I do not; I speak only from the property books in my office.

Ques. 2. I will ask you to examine the personal property book on file in your office for the year 1899, district #3, Rocky Station, and state what is the aggregate value of all personal property, exclusive of notes, bonds, stocks and other evidences of debt, and also state the amount charged under the head of bonds, notes and other evidences of debt to Sarah S.Ely of Dry Branch.

Ans. 2. On page five, line #20, of said book, for said year, I find charged to S.E.Ely, Dry Branch, I find under the head of horses &c. I find five head at \$75; under the head of cattle, five head at \$100; under the head of hogs, eleven at \$12; under the head of family crriages &c., one at \$4; under the head of farming implements \$5; under the head of clocks, one at \$1; under the head of sewing machines, one at \$6; under the head of household and kitchen furniture, \$50; under the head of other property not specifically enumerated, \$3; under the head of all bonds, notes &c., \$8730; the total of which is charged at \$8985.

Ques. 3. Do you know whether this was all of the personal property owned by Sarah S.Ely on the first of Feb., 1899?

Ans. 3. I do not; I only speak from the book.

~~xxxxxxx~~ It is admitted here that the S.E.Ely charged on the book with the above taxes, is Sarah S.Ely, the widow of Joseph N.Ely.

Ques. 3. I will ask you to examine the personal property tax book for district #3, Rocky station, for the year 1900, and state the value and amount of personal property charged to Sarah S. Ely's estate.

The foregoing question is objected to because the book shows

75
100
12
4
5
50
8730
8985

that the property is not listed by Sarah S.Ely herself, but by her Administrators, and therefore not permissible to contradict the listing of her property by herself for the preceding year 1899, and for the further reason that it is immaterial in arriving at the issues involved.

J.C.Noel, Atty. &c.

Ans. 3. I find on page six, line one, that Sarah S.Ely's ~~xxxxxxx~~ estate is charged with three head of horses, \$50; three head of cattle, \$40; nine head of hogs, \$9; house hold and kitchen furniture, \$50; guns &c., \$1; bonds, notes &c., \$8600; aggregate of all personal property, \$8750.

Ques. 4. Do you know whether this was all the personal property and its value which Sarah S.Ely owned on the first of Feb., 1900?

Ans. 4. I do not; I only speak from the book above referred to.

Re-Examination.

Ques. 1. In your cross-examination, in answer to question #2, you state that there is assessed to Sarah S. Ely on personal property book for district #3 personal property amounting in the whole to \$8985, could that assessment have included the value of the corn, hay, oats wheat and bacon, and other farm product, produced in the year 1899 on the farm; if any such articles were so produced on the farm in that year?

Objection: the foregoing question is objected to because the taxation of property for each year is made of what is on hand on the first of Feb. of each year, and it would have been impossible to have included in the assessments for the year 1899 the farm products raised on the farm for that year; such products if assessed at all, and if remaining on hand on the first of Feb. of the following year should have been taxed in the assessment for 1900.

R.L.Pennington, Atty. &c.

~~Ques.~~ Ans.1. I do not think it could.

Ques. 2. You state for the same year, 1899, that there were notes, bonds &c. charged to Sarah S.Ely to the amount of \$8730, I will ask you to state what the inventory of the notes, bonds &c. of the estate of Sarah S.Ely, as turned in by her administrators, and approved by the Commissioner of Accounts for Lee county, Va., on the 21 day of May, 1900, and recorded by you in your office on the 22 day of May,

R.L.Pennington, Atty. &c.

Ans. 2. \$8533.93.

[illegible]

And further this deponent saith not,

B. M. Morgan.....

E.G.Parsons, a witness of lawful age be^uing first duly sworn, deposes and says:-

Ques. 1. State your age residence and occupation.

Ans. 1. I am 54 years old; live at Pridemore, Va.; and am a farmer.

Ques. 2. Were you acquainted with Joseph N. and Sarah S. Ely in their lifetime?

Ans. 2. I was.

Ques.3. State whether or not for several years just preceding the death of Joseph N.Ely, and for several years just succeedin his death you would list for him and his widow Sarah S.Ely their notes,bonds, moneys, checks and other evidences of debt, and if so, please state at what time in the year you would prepare this list and for what purpose you would ^{it?} prepare ~~this list~~?

Ans. 3. For ^{up}ab^{ut} six years prior to the death of Joseph N.Ely I would, about twice a year, count the interest on his notes for him, on a portion of them about the first of January, and on ~~thaxxxxxix~~ an other portion about July or August; but after his death, on up to the death of Sarah S.Ely, about the first of January of each year, I would call at her house at her direction and count ~~the~~ interest on her notes, or such notes as she would give me, She would give the note to me in a bundle; I would open the bundle and count the interest on such note as she would consider collectable; now and then she would lay out a note from the bundle that ~~she~~ she did not consider good, but this was not very often. I would count the interest on the good notes, make a list giving the name of each maker and amount of the note with interest~~xxxxxxxix~~ on such notes as had been bearing interest for a year, and the notes which had not run a year

the amount of the note with the estimated interest. In this way I went through the entire list of the notes given me, with the exceptions of the notes she would lay aside. After I listed the notes and their interest, I would add to this the money, or such amounts as she would tell me she had on hands, and her bank deposits also--all things that she considered assessable of a money character. I would then foot up the whole amount and make a total of the same. I would then take the number of the horses, cattle, and other live stock that she would have on hand, or that she would tell me that she would have on hand, together with her household and kitchen goods, farming implements &c., with her estimated value of the same, and I would then make a grand total of the whole. This list was made for the purpose of enabling her to have her property assessed for taxation for the year for which the list was made. These lists I would leave in her possession.

Q The calculation I made for Joseph N. Ely was just simply to ascertain the interest on each note--I made no list of his notes.

Ques. 4. Did you make a list for Sarah S. Ely of her notes and property as above for the first year after Joseph N. Ely died?

Ans. 4. I did.

Ques. 5. You say ^{that} ~~sometimes~~ in making the lists for her, that sometimes she would lay aside a note that she did not consider collectable; please state, if you remember, what note these were she layed aside?

Ans. 5. I am of the impression that a note against Wm. Pennington, with Elk. Pennington as security, was one laid aside, after it had been listed a time or so, owing to the fact that Elk. Pennington denied that he signed the note--that is the renewed note. I am also of the impression that a note against Edward Pennington was laid aside, after he had moved to Tenn., it having been listed for several times. My recollection is that this latter note at one time with the accumulated interest amounted to about \$75. My impression is that a note against C. L. Hamblen was also laid asid, after having been listed for several times. I can't say definitely as to any other notes that were laid aside, but it seem to me that there were others.

Ques. 6. Did you at any time in making a list compare this list with

the list for the preceding year; that is, of the ~~money~~ note, money &c.?

Ans. 6. Not except as to the amount, ^{and that} to see if she was gaining, and how much.

Ques. 7. State whether you remember the ^hcomarisons so made showed a gain or loss in the amount of her notes, money &c. and other evidences of debt.

Ans. 7. I do not remember of any loss, but I do remember of gains.

Ques. 8. Do you know what became of the lists that you prepared for her and gave her?

Ans. 8. I left them in her care, and have seen a portion of them since in the hands of John Z.Ely--since her death.

Ques.9. The Wm.Pennington note that you spoke of having been laid aside, please state, according to your recollection, ~~whether~~ whether this note was a renewal of a note that had been executed to Joseph N.Ely in his lifetime?

Ans.9. It bears on my mind that the note was a renewal. ~~It is~~

Ques. 10. Please state what relation the John Z.Ely, in whose possession you saw a portion of these lists which you made for Sarah S.Ely, is to Joseph N.Ely?

Ans. 10. He is a nephew both by blood and by marriage.

Cross-Examination.

Ques. 1. We show you a note dated Jan.1, 1884, for \$256.32, payable to Sarah S.Ely purporting to be signed by Wm & Elk Pennington, which note ~~was~~ is ^anote ~~is~~ filed in the law cause of Sarah S. Ely vs. Wm.Pennington et al; please examine the same and state whether in your opinion it is the same note you spoke of in your examination in chief, as being laid aside and not taken into account for taxation?

Ans. 1. ~~Yes~~ I have seen said note; from the amount and date I believe it to be the same note; and said note I believe is in my hand writing, except the signatures.

There was a time, as I understood from her, that Elk.Pennington did not deny his liability; she required a new note and Wm.Pennington brought this note with his own and Elk.Pennington's name to it, after which I understood from her that Elk.Pennington did deny having

signed said note or having authorised any one to sign it for him.

Ques. 2. Did you ever hear Sarah S. Ely say any thing about having money from the railroad company for a right of way condemned through lands of Joseph N. Ely; if so, state what she said she did with it?

Ans. 2. I did hear her say she got money from said company; she said she purchased land with it. My impression is she said she purchased the land known in this cause as the Hiram bottom--My understanding is that she put other money with this to purchase the Hiram bot^tom.

Ques. 3. What is your recollection as to the amount of the condemnation money that she said she paid into said land?

The foregoing question or any answer thereto, is excepted to because the condemnation proceedings is the best evidence and cannot be contradicted by hearsay testimony.

J.C. Noel, Atty. &c.

Ans. 3. She told me she received from \$300 to \$400, and paid it into the land--this is my recollection. Whatever amount she did tell me that she received, that amount she said she put into the land, as I remember it.

Ques. 4. Have you observed both in the lifetime of Mr. and Mrs. Ely the value of property given in for payment of taxes, as compared with its actual value; if you say you have, is it not a fact that it has ever been the practice and custom in this county to give in property for taxation for a great deal less than its actual cash value?.

The foregoing question or any answer thereto is excepted to because the custom of other people in this county of listing their property for taxation at less than its real value is no evidence that either Joseph N. or Sarah S. Ely listed their property for taxation for less than its real value.

J.C. Noel, Atty. &c.

Ans. 4. I have observed it in Mrs. Ely's time, and probably in his time; as a general rule the assessed value is not equal to the actual value.

Ques. 5. Do you not know it to be a fact that Mrs. Ely in listing her property for taxation put its value for that purpose at less than its real value?

Ans. 5. I do not know that; she would only give me her valuation without me seeing the property.

Ques. 6. In your examination in chief, you stated that you had made comparisons of one year's list with the preceding year's list, and that they generally showed an increase, can you state what the increase was?

Ans. 6. I remember that some years there was more gain than other; I do not now remember any year that there was no gain, though there may have been such. I can't state definitely what the increase was for any particular year.

Ques. 7. You state that you made the list for Mrs. Ely at her request, and as she said, for the purposes of taxation; do you know that she gave in for taxation her property according to the list made by you?

Ans. 7. I do not know that she did.

Ques. 8. Do you know whether Joseph N. Ely in his lifetime gave in for taxation all the notes, bonds, moneys, and other evidences of debt owned by him?

Ans. 8. I do not.

Ques. 9. Do you know, or have you been informed, how much notes, bonds, moneys and other evidences of debt Joseph N. Ely, the last year of his life, gave in for taxation?

Ans. 9. I do not know, nor have I been informed.

Ques. 10. During the last year of the life of Joseph N. Ely, did you get any information from him, or from his notes and bonds &c., as to the aggregate of the same; if so, state what is your best recollection as to the amount of such?

The foregoing question or any answer thereto is excepted to in so far as it relates to what Joseph N. Ely may have told him, because self-serving on the part of the said Joseph N. Ely, and immaterial.

J.C. Noel, Atty. &c.

Ans. 10. I did not get any information from any source.

And further this deponent saith not.

.....*E. G. Parsons*.....

*Witness
claims
5-080*

STATE OF VIRGINIA, County of Lee, to-wit:

I, A.M.Goins, Special Commissioner in the above styled cause, do hereby cerify that the foregoing depositions of F.B.Cox, B.M.Mor- gan, America Graham, Mary P.Ely, Hiram H.Ely, John Z.Ely and E.G. Parsons were duly taken under oath after notice, and subscribed before me, and at the time and place as above mentioned.

Given under my hand, this September 14th, 1900.

.....*A. M. Goins*.....

Special Commissioner.

+++++

*Witness claims
50 cts*

James Spangler, a witness who was summoned but not examined, claims his attendance of 50 cts.

A.M.Goins,

Special Commissioner.

John Z. Ely & J. M. Smythe, Attorneys,

vs. } Depositions.

Elizabeth J. Pennington et al.

C.

Bill of costs on within:

Printers Notice \$10.00

Witnesses atd, 6.00

Sheriffs fees .40

Total, \$16.40

The deposition of B.M.Morgan taken pursuant to agreement between the plaintiffs and the defendants who have filed answers in the two chancery causes now pending in the Circuit Court of Lee County Va. of J.Morrison Smyth and J.Z.Ely Admrs. &c. against Elizabeth J.Pennington et al, and J.Z. and Mary P.Ely against J.M.Smyth et al which depositions are intended to be read as evidence in favor the defendants in said two chancery causes who are represented by J.C.Noel and C.T.Duncan, Attorneys,

Present B.L.Pennington and J.W.Orr attorneys for the plaintiffs in said two chancery causes and J.W.Orr Guardian ad litem for certain of the infant defendants, and C.T.Duncan attorney for the defendants for whom he and the said Noel filed answers and as Guardian ad litem for certain other infants.

B.M.Morgan a witness of lawful age being being duly sworn deposes and says:

Q.1.-- What official position if any do you occupy in the County of Lee?

A.-- I am Clerk of the County Court of said County.

Q.2.-- As such are you the keeper of the records of said office?

A.-- I am.

Q.3.-- Have you examined the settlement of the estate of Thomas Pennington deceased, made by his administrators and made an abstract of the amount in their hands and the amounts received by the said Joseph Ely, if so please file the same as part of your deposition marked "B.M.1"

A.-- I have made such examination and made an abstract from it, which I file marked as requested.

Q.4.-- I now hand you what purports to be a copy of a deed from Joseph Ely and Sarah S.Ely his wife to Tobias S.Pennington and John P.Graham, conveying to them their right title and interest and as children and heirs at law of Thomas Pennington deceased in his real estate. Please file the same as part of your deposition marked "B.M.2".

A.-- I file the same marked as requested.

Q.5.-- I now hand you what purports to be a copy of deed from Joseph N. and Sarah S.Ely his wife to William Pennington, conveying their un-

divided interest in a certain tract of land estimated to contain 300 acres. Please file the same as a part of your deposition marked "B.M.3"

A.-- I file the same as requested.

Q.6.-- I now hand you what purports to be an extract from, a decree of the County court of Lee County in the case of Tobias S. Pennington et al against Mourning Pennington et al, confirming partition. Please file the same as part of your deposition marked "B.M.4.".

A.-- I file the same as requested.

And further this deponent saith not.

Wit. 1 da 50

B. M. Morgan

America Graham another witness of lawful age being duly sworn deposes as follows:

Q.1.-- Please state your age, and your relationship to Sarah S. Ely deceased?

A.-- I am 70 year old, and I am a sister to Sarah S. Ely deceased.

Q.2.-- Please state anything you may know of property given to your sister Sarah S. Ely by her father in his life time, and in this connection you may state what property your father usually gave his children upon thier marriage?

Obj.-- The introduction of this witness is excepted to as incompetant she being a heir of the estate of Sarah S. Ely deceased and a devisee under the will of Joseph N. Ely deceased, they being both dead.

J.W. Orr and T.L. Pennington.

A.-- I was very small when she married and can not tell you exactly what she got, but I can tell you what ~~x~~ I got. I got a good mare and a saddle, a good cow and I think a sow, and five head of sheep, a good bed and bed-clothes and other little things needed by young people when they married and set up to house keeping. And my supposition is that my father gave this much to each of his children. I was born February the 7th 1830, and my sister was married as I am informed the records show on June the 8th 1834.

Q.3.-- Please state whether or not, when you can first remember, your

sister and her husband Joseph N. Ely were wealthy or poor, and struggling to make a living?

A.-- They lived when I can first remember where they both afterwards died. They were not surrounded by much property, and were industrious and striving to make a living.

Q.4.-- Please state whether or not your sister during her whole life was an industrious, frugal and hardworking woman?

A.-- I would take her to be that way, and I can say the same for Mr. Joseph N. Ely, her husband.

And further this deponent saith not.

America Graham

I, W.A. Baker a justice of the peace in and for the County of Lee in the state of Virginia, do certify that the foregoing depositions of B.M. Morgan and America Graham, were duly taken sworn and subscribed to before me in my county aforesaid at the place and for the purposes in the caption mentioned. Given under my hand this the 3rd day of August, 1900.

W. A. Baker J.P.

J. J. Ely + J. M. Smyth Advers
vs. { Depositions
Elizabeth J. Pincus et al

B. M. Morgan \$.50
America Graham
\$.50

W. A. Baker Justice
fee for taking these
depositions 2 hr. \$1.50

The depositions of C.M.Graham and others taken before me, W.A.Baker a justice of the peace in and for the County of Lee in the state of Virginia, at the law office of R.L.Pennington in the town of Jonesvill on July the 31st 1900, by agreement of parties appearing in said cause and answering, and to be read as evidence in behalf og the defendants answering through their attorneys Pennington Bros. and Orr & Irvine in the two chancery causes styled John Z.Ely and J.M.Smyth adars. &c. against Elizabeth J.Pennington and others and J.Z. & Mary P.Ely against J.M.Smyth and others, now pending in the circuit court of Lee County.

Present Pennington Bros. and J.W.Orr for the defendants for whom they file answers, and J.W.Orr guardian ad litem for Fanny Johnson and others, and C.T.Duncan for the dfendants for whom he and J.C.Nowl file answers, and C.T.Duncan ~~guardina~~ adlitem for Peter Reasor and others.

These depositions while taken by agreement are subject to all such exceptions for relevancy and otherwise as if they had been taken on notice duly served.

C.M.Graham a witness of lawful age being first duly sworn depsoes as follows:

Q.1.-- State your name, residence , age and occupation.

Obj.-- The deposition of this witness or ^{any} ~~another~~ on the issue joined in the above styled causes is objected to because the whole matter in issue in both causes depends upon the proper construction of the will of Joseph N.Ely deceased, and said will must be construed by itself and of itself and its construction can in no way be aided by outside testimony.

C.T.Duncan, Atty.

A.-- Charles. M.Graham, 38 years old, reside four miles west of Jonesville, and am a farmer.

Q.2.-- What relationship are you to America Graham, one of the defendants in these causes, and John P.Graham?

A.-- Son.

Q.3.-- Is your father living or not?

A.-- He is not.

Q.4.-- Were you acquainted with John E.Burk and Henry Graham?

A. I was.

Q.5.-- Are they living?

A.-- They are not.

Q.6.-- What was the occupations of your father, Henry Graham and John E.Burk and also Joseph N.Ely?

Obj.-- Objected to because immaterial.

C.T.Duncan, Atty.

A.-- My father was a practicing physician, a surveyor, a farmer and was for six years next before his death and at the time of his death Treasurer of this county. Henry Graham was a farmer. John E. Burk was a farmer and physician. I do not know much about Joseph N. Ely of my own knowledge, but suppose he was a farmer. If I remember correctly my father and grand father died six years ago last February. John E. Burk died as I remember some time last Spring. Joseph N.Ely according to the inscription on his tombstones which I noticed a few months ago, had at that time been dead ~~xxxx~~ between seventeen and eighteen years. As I remember Sarah S.Ely died about the 12th day of April, 1900.

Q.7.-- Were you acquainted with the handwriting of your father John P.Graham?

A.-- Yes sir.

Q.8.-- I now hand you what purports to be the last will of said Joseph N.Ely, please examine it and tell what part if any of the same was written by your father John P.Graham?

Obj'-- Objected to because immaterial and irrelivant. The said will has been probated and the handwriting or person who wrote it is immaterial.

C.T.Duncan, Atty.

A.-- I can't say that any of it is his handwriting. The paper handed me bears dated the 20th day of January, 1868, which was before I was born.

Q.9.-- Does it not resemble the handwriting of your father as you remember it?

A.-- Very little according to my view of it, now and then I see

a word that resembles his a little, in fact I wouldn't have taken it to be his handwriting.

And further this deponent saith not.

Writ 1 do \$5.50

Charles M. Graham

C.T.Duncan, another witness of lawful age being duly sworn deposes as follows:

Q.1.-- State whether or not in the building of the L.& N.R.R. in this county, any part of the same was constructed through the lands mentioned in these causes?

Obj.-- The testimony of this witness is objected to for the same reasons stated in the objection to the testimony of C.M.Graham.
C.T.Dunan, Atty.

A.-- The L.&N.R.R. was constructed over and upon lands then in the possession of Sarah S.Ely, and I suppose they are the lands mentioned in the proceedings in these causes, though personally I do not know this fact.

Q.2-- State what connection, if any, you had in procuring the right of way for said railroad company through said lands?

A.-- I was attorney for the L.&N. Railroad Company and was charged with the duty of procuring right of way and had exclusive control of that matter.

Q.3.-- Then state how said company procured said right of way through said lands if you know, and what it paid for the same if anything, and to whom the money was paid?

A.-- The right of way through said lands was procured by condemnation proceedings under the statute. I have just examined the report of the commissioners appointed to fix and determine compensation to be paid for lands taken by said railroad company for its purposes, and I find that \$300.00 was the amount fixed as the sum to be paid for the two strips of land taken by said company out of the lands then in possession of the said Sarah S.Ely. If I had spoken from my own recollection outside of the report of the said commissioners I would have said \$225.00 was the sum paid her, that being my recollection I am not positive as to whether I paid the money

into Court or paid it to Sarah S.Ely in person, but my strongest impression is that I paid it to her in person and this recollection is strengthened by the fact that I have just examined the report of D.C.Sewell, who was appointed a commissioner to determine under the statute who was entitled to said money. This report seems to have been filed on the 29th day of March 1890 and confirmed by an order of the County Court of Lee County entered on the 9th day of April. 1890. This report ascertains that Sarah S.Ely is entitled to the entire sum and adding this to my recollection I would say my best impression is as above stated that I paid this money to Mrs.Ely herself by check. I have ^{an indistinct} a recollection of giving her one or more checks.

And further this deponent saith not.

C. T. Duncan

E.R.Garrison, another witness of lawful age being duly sworn, deposes as follows:

Q.1.-- Give your name age residence and occupation?

A.-- E.R.Garriohn, 26 years old, residence Pennington Gap, and am a farmer.

Q.2.-- State whether you were at the sale made by the administrators of Sallie S.Ely, and if so state whether you bought the old family Bible, if you did state whether said Bible shows a record of the birth and deaths of Joseph N. and Sarah S.Ely?

Obj.-- This question and any answer thereto is objected to for the same reasons stated to in the objection to the first question propounded to C.M.Graham.

C.T.Duncan, Atty.

A.-- I was at said sale and there bought an old Bible which I now have here. There appears in it under the head of family record and births the following, to-wit: "Joseph S.Ely was born May 10th, 1813. Sarah S.Ely was born, May 16th, 1819" also under the head of family record and deaths I find the following, to-wit: " Joseph N.Ely deceased December 11th 1882 in the 70th year of his life. Sarah S.Ely departed this life April 12th 1900 in the 81st year of her life" also under

the head of marriages I find the following to-wit: Joseph Ely and Sarah S. Pennington was married June the 8th, 1834" These entrys which I mention were in said Bible at the time I bought it.

Cross Examination.

X.Q.1.-- Do you know the handwriting in which said entrys or any of them are?

A.--~~x~~ I do not.

X.Q.2.-- Does not said book appear to contain the record of the birth, marriage and death of Thomas Pennington the father of Sarah S. Ely?

A.-- It seems to do so. And shows that Thomas Pennington was born July 5th, 1797, married January the 29th 1818, and died March 27, 1858.

X.Q.3.-- Examine said Bible and give the date of its publication.

A.-- It seems to have been published in 1855.

And further this deponent saith not .

Wit: 1 da. \$50

E. R. Garrison

George H. Myers, another witness of lawful age being first duly sworn deposes as follows:

Q.1.-- Were you acquainted with Sarah S. Ely, if so how long did you know her, and how near did you live to her during her life time?

~~XXXX~~

A.-- I did know, knew her for 30 years or more. I lived about four miles from where she lived.

Q.2.-- State whether or not at any time after the death of Joseph N. Ely she, the said said Sarah S. Ely, ever talked to you concerning the will of the said Joseph N. Ely, if you say she did, please state what she did say concerning the same. Give the conversation as near as you can?

Obj.-- The foregoing question and any answer thereto is objected to because irrelevant, immaterial and inadmissible. The will of Joseph N. Ely speaks for itself and her construction of it, if she made one cannot affect in any way the issue which must be determined by the Court.

A.-- I did have a cinversation with her concering said will about three years ago, at her house. We were talking about making money.

She was talking about a piece of land which she had bought from ^{Myrauda} ~~my~~ Hughes. I asked her did she think the land would make her more money than the interst on the money that she paid for it. She said I don't know as to that, that that wasn't what she was looking at. She said Joe Made a will you know. I told her I had heard that he had made a will, but how he had made it I didn't know. She says " I was just going to tell you. He made it to me to have and to use for my life time, then he made one-tird of ^{it} to my people and two thirds to his. And she said why I put this money into that land, there had been so much confusion about people ~~making~~ loseing money and banks breaking that she had put it in the land where it would be safe, that she didn't want his people to come up and say after she was dead that she had distroyed his means from them. This was all that was said then. I had another conversation last January at her home. Previous thereto I had borrowed \$100.00 and my wife was my security to it she had told me I could keep it along if I would pay the interest on it. On this occasion I asked to borrow \$50.00 more. she told me I could get ^{it} if she had it to spare, she then went into a room and broughtnout the money and handed it to me, and I told her I would take it if I could give her satisfactory security. She said if my wife would go on the note with me I could have it, as she had gone my security on the other. She dropped her head as if c counting something and in a few moments she said, "I was just counting to see, if I were to live some time whether that \$100.00 and this \$50.00 would over-run her part of the estate. My wife was a d daughter of A.J. Ely and he was a brother of Joseph N. Ely.

Q.3.-- In either of the conversations you had with her as above detailed, did she state anything about her custom of taking notes and having interest paid annually and the like, iff so state what it was?

A.-- After I had had the \$100. abput a year I went to pay it off. She said if I wanted it longer I could keep in on. I told her I would keep it if she would let me pay the interest every year. She said

that it was her custom to take a new note every year or to have the interest paid, that she generally did that. I did pay her the interest yearly up to the time of her death. I still owe the \$100 and the \$50.

Cross Examination.

X.Q.1.-- Was Sarah S.Ely an industrious, saving, careful and money making woman?

A.-- That is what I always took her to be.

X.Q.2.-- Was she not also a very hard-working woman?

A.-- That was generally the talk and always seemed that way to me.

And further this deponent saith not.

G. Myers

John H.Kelly, another witness of lawful age, being first duly sworn deposes as follows:

Q.1.-- Were you acquainted with Sarah S.Ely deceased, if so how long did you know her?

A.-- I was acquainted with her. I have lived in the settlement and have known her ever since I was a boy. I was living with her at the time of her death and had been living with her since January the 20th, 1896.

Q.2.-- State if at any time while you lived at her house you heard her say anything about the will of her husband, Joseph N.Ely, if so state what she did say concerning the same?

Obj.-- Objected to for the same reasons offered as objections the question propounded to George H.Myers.

C.T.Duncan, Atty.

A.-- Charles Hamblin had been writing to her about some money he owed her, and she had been writing to him to come and see about the matter himself and not be writing about it. She then said that if she knew just how much it would take to run her and keep her comfortable the balance of her life, she would rather have the estate divided out according to the way the will said, two-thirds of it to his people and one-third of it to hers, than to be bothered with it, that it was a lot of trouble to her.

This occurred about one year ago ~~xxxxxxxxxxxx~~ last Spring and at her house.

Cross Examined.

X.Q.1.-- Was Mrs. Ely a working woman?

A.-- She was.

X.Q.2.-- Was she a careful saving money making woman?

A.-- Yes sir, I thought ~~do~~ as much as any woman.

X.Q.3.-- Did she attend ~~to~~ her business or get some one else to attend to it for her?

A.-- She got some one else to draw her notes up for her.

X.Q.4.-- Who attended to her other business?

A.-- She generally attended to it herself, or had it done.

X.Q.5.-- Didn't she watch over her farming operations herself?

A.-- Yes sir, she did.

X.Q.6.-- Did she often talk to you about her business?

A.-- Nothing more than just her farming business, and once and awhile some one would be a little slow about coming to give a new note she would have me to go and tell them to come and renew the note.

X.Q.7.-- Did you ever hear her mention her husband's will at any other time except when she was talking about Mr. Hamblin as stated by you above?

A.-- Yes, I have heard her mention it, but have no recollection of hearing her say how the will was to go.

X.Q.8.-- Did you ever hear her state how much she had made since the death of her husband?

A.-- No, I never did.

X.Q.9.-- Ypu never heard her say anything about what good care she had taken of the property, and how she had improved it?

A.--I have heard her say that she wanted to keep everything up as he left it and not let it go down hill.

X.Q.10.-- Then the way she expressed herself was that she didn't want to lessen his estate, that was all was it?

A.-- Yes sir.

X.Q.11.-- Did she sell any property while you lived with her, if so state what she sold?

A.-- She did sell some property. She sold two horses, one yoke of oxen, a cow and a good many calves and some hogs. She sold some corn and bacon, but this was mostly to her work hands. She each year made a small crop of her own, the rest of the land she rented out and collected the rents. She attended to the renting and collecting of the rents.

ReExamination.

Q.1.-- Were not the two horses sold raised by her from colts?

A.-- They were.

Q.2.-- Were they not colts of two mares that were owned by her at the time of her death and sold at the sale?

A.-- One was and one was not.

And further this deponent saith not.

Wit: 1 da. \$1.50

John H. Kelly

Hiram H.Ely, another witness of lawful age, being first duly sworn deposes as follows:

Q.1.-- State your name, age, residence and occupation?

A.-- Hiram H.Ely, 53 years old; reside at Tide post office; am a farmer minister.

Q.2.-- Have you seen the Bible had here to day and produced by E. R.Garrison on his examinaxtion, and examined it, if so please state if you ever saw said Bible before and where?

At this point the defendants represented ^{by} Duncan and Noel Attys. desired to ask the witness a preliminary question with a view to filing an objection to the testimony of this witness.

Ques.-- Are you one of the heirs of Joseph N.Ely deceased?

Ans.-- I am a son of Hiram Ely who was a brother to Joseph N.Ely and I suppose I would be one of his heirs.

Obj.-- The testimony of this witness is objected, because both the said Joseph N.Ely and Sarah S.Ely are dead and this witness is incompetent to testify.

Answer to question 2 above.-- I have seen said Bible and looked at ^{it} I have seen said book before at Sarah S.Ely's. I saw it there at Joseph N.Ely's house in his life time.

Q.3.-- State, if you know, anything of the entrys in said Bible and referred to by said Garrison in his deposition?

A.-- I heard Joseph N.Ely and Sarah S.Ely say that William Yeary did that writing for them. They spoke of that as the family record of their births marriages &c.

Q.4.-- State if at any time you ever heard Sarah S.Ely say anything concerning buying the land called the John P.Hughes and wife tract if so state what she said and when and wheremit was?

Obj.-- The foregoing question and any answer thereto is objected to because the deed of Hughes and wife conveying said land is the best evidence of the contract made and the purposes of its making, and said deed and Sarah S.Ely's interest in said land cannot be altered amended or varied by parol declaration or disclaimers. And further because the evidence sought to be obtained by and answer to the question is irrelevant and immaterial.

C.T.Duncan, Atty.

A.-- I heard her speak of it directly after she bought the land. It was in her kitchen. I don't remember how the talk came up but it was in regard to money. In the conversation we were talking about gold money, and I said to her that some people were keeping gold and paying taxes on it when it was no better than any other kind of money. She said that was just what she thought, and that she had taken the gold that my uncle left at his death and paid into the land ^{she} bought of Jackson's heirs (meaning Jackson Ely's heirs). She said she got tired of holding the money there in her possession and being responsible for it.

Q.5.-- Is the Jackson Ely heirs land the same as the John P. Hughes and wife land?

A.-- It is the same.

Q.6.-- How near did you live to Sarah S.Ely and how long did you so live?

A.-- I don't suppose that I have ever lived more than two mile from

her.

Q.7.-- Is it not a fact that the said Joseph and Sarah S.Ely lived at the place where she died from the time of their marriage to the date of their death?

A.-- They did so far as I know. If they ever lived anywhere else I don't know it.

Q.8.-- State whether they ever had any children by the marriage?

A.-- None that ever I knew of.

Q.9.-- Have you not heard them say that they never had any children.

A.-- I don't know that I ever did. I have heard them say that they would have been proud if they had have had children.

Q.10.-- Do you remember about the time of the death of the said Joseph N.Ely, and if so when did he die?

I do. He died on the 11th day of December 1882 about nine o'clock in the morning.

Q.11.-- At the time of his death did he own any personal property, if so state what it was?

A.-- I don't know that I could tell you deffinitely about his property at the time of his death. I remember that they had three horses. I remember that there were some cattle but I don't remember how many or what kind they were. I remember there was a yoke of cattle. I remember they had some hogs but don't remember how many.

Q.12.-- State whether or not at the time of the death of Sarah S.Ely she had any of the property left by her husbnad at the time of his death?

A.-- They had a black mare there that was there at the time of his death. This was all that I remember of that was there, at the time of his death.

Q.13.-- Was it not a fact that the black mare spoken of by you was kept for a brood mare and was there not most every year after the death *of Joseph N. Ely, were not colts raised* raised from her?

A.-- She bred the mare. I suppose she kept her for her breeding and working. I don't remember how many colts were there. I think there was a year or two that the mare did not bring colts. and the last y year she did not bred her at all.

Q.14.-- What becamae of the other two horses left by the said Joseph N.Ely if you know?

A.-- She sold one, and traded one off and then sold the one for which she traded ~~that~~ one.

Q.15.-- Do you know what she got for these horses?

A.-- She told me she got \$40. for the one she sold, and I don't know what she got for the other.

Q.16.-- What did she do with the yoke of cattle?

A.-- She either sold them or traded them, but I don't know what she got for them.

Cross Examination.

X.Q.1.-- Did Joseph N.Ely own any land at the time of his death, if so state how much, if you know?

A.-- He did, but could not tell you how much he owned ~~exaatly~~. I expect there was 240 acres or about that much in his possession at that time.

Q.Q.2.-- Was this land all purchased by him, or did he heir some of it?

A.-- He heired a portion of it and the rest he purchased.

X.Q.3.-- How much did he hier and how much did he purchase?

A.-- It has always been claim^{ed} that the piece he heird from his father contained about 82 acres . The place where he lives was purchased by him and His brother Hiram from Eli Hughes in partnership. This tract contains some 60 or 70 acres as I judge and after the marriage of Joseph Ely my father sold and conveyed his interest in said ~~Hughes~~ land to the said Joseph. He purchased another tract as I remember containing about 52 acres from young Isaac Hughes . He also purchsed a 12 acre tract from George W.Hughes. This all the land he owned that I know of except he made an entry of a tract containing about 40 acres. I see from the land books of Lee County for the year 1882 that he was charged with 225 $\frac{3}{4}$ acres. The entrys are made as follows 168 $\frac{3}{4}$ acres Blue Spring valued at \$9.00 per acre including buildings; \$300.00 for buildings making a total valuation of said t . . .

ation of said tract of \$1518.75; 57 acres Big Hill, valued at \$3.00 per acre nothing for buildings, making a total valuation of \$171.00

X.Q.4.-- Is the 12 acre George W. Hughes tract mentioned by you above a part of 168 $\frac{3}{4}$ acre Blue Spring tract.

A.-- I do not know positively, but suppose it is as it ajoins it.

X.Q.5.-- Npw is it not a fact that ~~that~~ 12 acre tract wa conveyed jointly to Joseph N. and Sarah S. Ely?

A.-- I don't know. I have heard that such is the case, since the d death of Sarah S. Ely.

X.Q.6.-- Do you know what becam~~e~~ of a tract of land that was conveyed jointly to Joseph N. and Sarah S. Ely, situated in the Pockett Country and conveyed by Thomas Pennington.

A.-- I am not positive, but I think said land ~~wa~~ sold during the life time of Joseph N. Ely to Anthony Witt or Jacob Witt or one of them.

X.Q.7.-- The personal property for Rocky Station District for the year 1883 and ask you to state from that what property Jos~~eph~~ N. Ely owned that is assessed to him for that year together with the valuation thereof.

A.-- 4 head of horses valued at \$250.00; 8 head of cattle valued a t \$135.00 6 head of sheep, valued at \$6.00; 19 hogs valued at \$30.00; one wagon, valued at \$25.00; farming untesils, valued at \$25.00; one clock valued at \$2.00; 1 sewing machine, valued at \$20.00; household and kitchen furnature, valued at \$100.00; fire arms, valued at \$4.00; solvent bonds, demands, claims &c. \$4251.00, making a total valuation of \$4848.00. And I file herewith an extract from said personal property book.

And further this deponent daith not.

Hiram H. Ely

F.B. Cox, another witness of lawful age being duly sworn deposes as follows:

Q.1.-- Give you name, age, residence and occupation?

A.-- F.B. Cox, am 61 years old, reside at Tide post office, farmer.

Q.2.-- State whether you knew Joseph N. and Sarah S. Ely in their 1

life time, if so how long did you know them.

A.-- I did know them and have know~~at~~them for 30 or 35 years.

Q.3.-- Did you know Dr. John P. Graham in his life time, if so about how long?

A.-- ~~xx~~ I did know him about twenty or twenty-five years.

Q.4.-- Were you acquainted with the handwriting of the said John P. Graham?

A.-- ~~xxxx~~ I suppose I am; I have seen a great deal of it and have seen him write.

Q.5.-- I hand you what purports to be an original will of Joseph N. Ely, please examine it and state ~~xxxxxxx~~ what part of it if any is in the hand writing of John P. Graham.

Obj.-- Objected to because immaterial and irrelivant. It does not matter by whom the will was writ en and for the further reason that the question assumes that some part of the will was in the handwrit-
ing of John P. Graham and is to that extent leading.

C.T. Duncan. Atty.

A.-- I have examined said paper and my best opinion is that the entire body of said will is in the handwriting of said John P. Graham

Cross Examination.

X.Q.1.-- Had you ever seen John P. Graham write any prior to the 20th day of January 18863?

A.-- I don't remember that I ever did, nor do I remember of being acquainted with his handwriting before the war.

X.Q.2.-- How long have you been acquainted with the handwriting of John P. Graham?

A.-- About 11 years ago.

And further this deponent saith not.

H. B. Cox

John Z. Ely another witness of lawful age being duly sworn deposes as follows:

Q.1.-- Were you acquainted with John P. Graham and if so how long d did you know him?

~~xxxxxx~~ It is admitted by the plaintiffs that this witness is a son

of A.J.Ely who was a brother to Joseph N.Ely and that this witness claims to be an heir and devisee under the will of Joseph N.Ely. Upon this admission the defendants heirs of Sarah S.Ely deceased object to the testimony of this witness because Joseph N.Ely and Sarah S.Ely are both dead.

C.T.Duncan.Atty.

A.-- I was acquainted with John P.Graham, I have known him ever since before the war between the states, for I went to school to him then.

Q.3.-- State whether you ever heard John P.Graham say anything about writing the Will of Joseph N.Ely, if so state what he said as to who wrote it?

A.-- He said he wrote it.

Q.4.-- State whether you ever heard said Sarah S.Ely say anything about buying the John Hughes and wife land, if so state what she said if anything about paying for the same?

A.-- This land was formerly owned by my father. After his death his heirs sold it to John Hughes and wife and he and wife sold it to said Sarah S.Ely. After she had contracted for the same, I owed her two notes one of which for \$100.00 was for money borrowed and money which she obtained from the L. & N. Railroad Right of way through the Joseph N.Ely land. She told me she wanted that money that came out of the right of way to put ~~xxxx~~ back into land that it would be more safe for your heirs to be in land than it would be to be in money. I paid her the money and lifted the note. This piece of land is known in the community as the "Hiram bottom".

Obj.-- The foregoing answer is objected to because immaterial and irrelevant and because the deed of Sarah S.Ely to said land is the best evidence of the contract made and the purposes for which it was made, and its terms cannot be varied by parol testimony or by the oral statements of the grantee in said deed.

C.T.Duncan, Atty.

Q.5.-- Were you acquainted with the lands that Joseph N.Ely owned at the time of his death, if so state whether all of this land adjoins

A.-- I was acquainted with his land. It did not all adjoin. There were two disconnected tracts.

Q.6.-- State whether he inherited or had willed to him any portion of the lands he owned at the time of his death, if you say he did please state how much he inherited or had willed to him, and its comparative value with the lands which he purchased?

A.-- I have always understood, and heard him say that he had 75 acres of it willed to him. This is the western or lower place. The tract which was willed to him, I will say that one acre of it in my judgment is worth two or three acres of the balance of his land.

Q.7.-- State whether or not you are one of the Administrators of the said Sarah S.Ely?

A.-- I am.

Q.8.-- As such administrator state whether or not in the papers of said Sarah S.Ely you found tax ticket for 1883 of Sarah S.Ely, if you say you did please file the same here with your answer marked "Ticket".

A.-- I did find such a ticket, and I here file the same marked "Ticket" as requested.

Cross Examination.

X.Q.1.-- Did you find among the papers of Sarah S.Ely a tax ticket against Joseph N.Ely for year 1882, if so please file the same as a part of your deposition marked x "Ticket 2"

A.-- I did find said tax ticket and file the same as requested marked "Ticket 2".

X.Q.2.-- I now ask you to file the tax tickets for Sarah S.Ely from the year 1882 down to and including the year 1899.

A.-- I file the same as requested and including the ticket for 1884 for the land of Joseph N.Ely. Said tickets are pinned together and are marked "Tax tickets No. 3."

And further this deponent saith not.

J. S. Ely

Virginia, Lee County, to-wit:

I, W.A. Baker a justice of the peace in and for the County of Lee in the state of Virginia, do certify that the foregoing deposition of C.M. Graham, C.T. Duncan, E.R. Garrison, G. Myers, John H. Kelly, Hiram H. Ely, F.B. Cox, and John Z. Ely were duly taken sworn and subscribed to before me in my county aforesaid at the place and for the purposes in the caption mentioned. Given under my hand this the 31st day of July, 1900.

W. A. Baker J.P.

J. Z. Ely & Co

20 $\frac{2}{3}$ Depositions

E. J. Pennington total

Chas. Graham, \$. 50

C. T. Duncan

E. R. Garrison .50

L. Myers

John H. Kelly .50

Hiram H. Ely

J. B. Cox

John F. Ely

Fee of W. A. Baker

Justice taking de-

positions & hours . \$6.00

\$7.50

The depositions of James P. Ely taken before me Wm. J. Orr, a Justice of the Peace in and for the County of Su and State of Virginia, by agreement on the 18th day of May, 1901 to be read as evidence in behalf of J. P. Ely in a certain petition filed in the chancery cause of Smyth & Ely admors. vs. E. J. Huntington, and now pending in the Circuit Court for Su County, wherein said J. P. Ely is plaintiff and E. J. Milham admors. & it are duly done.

Present E. J. Huntington for plff and W. J. Milham for himself.

James P. Ely a witness of lawful age, after being duly sworn deposes as follows.

I live in Su County, and am 40 years old and am a farmer; I knew A. J. Ely in his life time; he has been dead about 6 to 8 years; the

lived at the time of his death, and for several years previous in the State of Kentucky. ~~The~~ I was present when said A. J. Ely signed, or rather made his mark for his signature, to the \$25⁰⁰ note mentioned in the petition of said S. P. Ely. It was myself who suggested that a witness also sign said note; and so Mrs. Lizzie Ely, wife of said A. J. Ely, signed said note as a witness; she then and now and ever since the date of said note has been a non-resident of this State. Also has said A. J. Ely ever since the said note was executed up to the time of his death been a non-resident of this State. The note was given for between horses, said S. P. Ely and A. J. Ely exchanged horses, and A. J. Ely gave his note for \$25⁰⁰ as book. For the

When note, I ~~could~~ said
A. J. Ely Cash

X Examined

Question by William; Do you
say you were present when
the note was given?

Ans. I was. I also saw his wife
sign it as a witness.

And further this deponent
saith not

James P. Ely

Witness
claim
1 day 504

Virginia

County of Lee, to-wit:

I, H. P. Orr, a Justice of the
peace in and for said County &
State, do hereby certify that the
foregoing depositions of James P.
Ely were duly taken, sworn to
and subscribed before, at the
law office of E. M. Prevington
and at the time, and for the pur-
pose of in the caption men-
tioned lawsuit mentioned.

Given under my hand
this the 18th day of May, 1901

H. P. Orr J.P.

J. F. Ely

vs } Depositions

W. J. McNamee adu & Co

Filed May the 20th 1901

A. B. Munsey Clerk

J. P. Fee

754

Virginia,

Lee County, Va.

This Geo. I. B. Fly personally appeared before me, a Justice of the Peace in and for said county, and being duly sworn, that Sarah Taylor, Wilma Taylor, Lydia Tucker, George Ann Fly, Lydia Fly, and Jackson Fly, against who he is executor of the estate of George W. Fly deceased, as E. J. Birmingham et al in the Circuit Court for Lee County, Va., are respondents of this writ. These parties of said estate are deceased as stated, 1901.

Witness my hand and seal of office at Lee County, Va., this 1st day of March, 1901.

J. P. Ely for &c

no. } Affidavit

A. J. Ely's heirs

Filed April 1st 1901

A. B. Munsey Clerk

COMMISSIONER'S REPORT.

John Z.Ely & J.M.Smythe, Admrs. &c.,)
vs.) IN CHANCERY.
Elizabeth J.Pennington et al.,)

To the Hon.H.A.W.Skeen, Judge of the Circuit Court for Lee
County, Virginia:

Your undersigned Special Commissioner, appointed by decree entered in the above styled cause, in vacation, August 10th, 1900, after giving notice of the time, place and purpose of his sitting, as required by said decree, by publication thereof in four successive issues of the Southwest Virginian, a weekly newspaper published at Jonesville, Lee county, Virginia, and as will be seen from a certified copy of the notice, attached to the depositions filed with this report, marked "Comr's Notice", proceeded on the 10th day of Sept., 1900, the time, and, at the office of A.M.Coins in the town of Jonesville, the place, designated in said notice, to execute the requirements of said decree; and the proceedings having been thenceforward regularly adjourned from day to day, and being at length completed, the result is herewith respectfully submitted.

Especially is your commissioner directed by the foregoing decree to hear evidence and report upon the following matters:

1st. Of what real estate Joseph N.Ely died seized, its nature and location, and whether or not it all remains in kind, and if not, the value of such as has been disposed of, as of the time of its disposal.

2nd. Of what personal property the said Joseph N.Ely died possessed, of all kinds and descriptions, its nature and value as of the time of the death of said Ely.

3rd. The increments, if any, to the estate so left by the said Joseph N.Ely in the hands of his wife, Sarah S.Ely, stated as of the time of her death, and the nature thereof.

In response to enquiry 1st, above, your commissioner refers to page 2, of the depositions herewith filed marked "C", where it is admitted by the attorneys for the parties in interest that Joseph N.Ely, at the time of his death, owned what was known as his Home Place, a tract of land made up of purchases from different parties, containing about 138 3/4 acres; a tract known as his Lower Place, being the land laid off to him in the partition of the estate of his father, Joseph Ely, containing about 75 acres; and a one-half

interest in a 12-acre tract conveyed jointly to him and his wife, Sarah S.Ely, by G.W.Hughes and wife, adjoining the said Home Place.

It is further admitted by said attorneys that all of said lands owned by the said Joseph N.Ely at the time of his death still remain in kind, with the exception of the strip condemned by the Louisville & Nashville railroad company for its right of way through the lands owned by Joseph N.Ely individually, containing 6.24 acres, and for which Sarah S.Ely his widow received the sum of \$325.00.

Said lands owned by the said Joseph N.Ely at the time of his death are located in Lee county, Virginia, on the waters of what is known as Dry Branch, and are valued principally for farming purposes.

SUMMARY.

Joseph N.Ely, at the time of his death, owned in fee the following lands:

1st. His Home Place,	138 3/4 acres.
2nd. " Lower "	75 "
3rd. " 1/2 interest in 12-acre tract,	6 "
<u>TOTAL NO. ACRES OWNED,</u>	<u>219 3/4 "</u>

From the foregoing 219.75 acres, deduct 6.24 acres, the number condemned for right of way for the Louisville & Nashville railroad, and we have 213.51 acres remaining in kind at the death of Sarah S.Ely.

Sarah S.Ely received \$325 for the 6.24 acres condemned for right of way for the L. & N. railroad.

2nd. Of what personal property the said Joseph N.Ely died possessed, of all kinds and descriptions, its nature and value as of the time of the death of said Ely.

Joseph N.Ely departed this life, testate, Dec. 11, 1882. No personal representative qualified. The whole of his property, both real and personal, went into the hands of his widow, Sarah S.Ely, pursuant to the provisions of his will. There was no appraisement of his property. No memoranda kept of its kind, nature, quality or value. No record kept of moneys, notes, bonds, checks, or other evidences of debt left by him at the time of his death.

Eighteen years, or thereabout, bassed by after the death of Joseph N.Ely and Sarah S.Ely, on April 12, 1900, was called to meet

with her husband. She died intestate, and John Z.Ely and J.M.Smythe were appointed and qualified as her administrators, and, on the 27 and 28 days of April, following her death, exposed for sale at public auction to the highest bidder on a credit to January 1st, 1901, without interest, all the personal property left by her at the time of her death. The property sold by said administrators on the days of sale amounted to \$993.83; the cash rent received for the real estate for the year 1900 amounted to \$87.50; the inventory of notes and bonds, not including interest, amounts to \$8533.93; and the cash received and cash and check in bank amounts to \$636.91. The whole making a total received into the hands of said administrators, not counting interest on notes and bonds, of \$10252.17.

Contentions now arise between the heirs of Joseph N.Ely and Sarah S.Ely as to the distribution of the fund in the hands of the administrators according to the will of the said Joseph N.Ely. This suit is instituted, and the court is called upon to interpret said will. The will is accordingly interpreted by the court, and this commissioner is appointed and directed to hear evidence, "take an account and report" upon the enquiries referred to him by the court. And so your commissioner proceeds, "with fear and trembling and roundabout ceremony", to answer the enquiries of the court as best he can. Eighteen years have passed by, and, from questionable records and the slippery memories of men, your commissioner undertakes to ascertain "what personal property the said Joseph N.Ely died possessed, of all kinds and description, its nature and value as of the time of the death of said Ely". If a definite and specific answer is demanded by the court to the enquiry, then your commissioner answering in broken English says, "It can't be did"; but if an approximation of the matter will satisfy the enquiry, then your commissioner, guided by the lights before him, will proceed to report the best he is enabled, trusting that if he commits error the court will rectify.

It will be seen from the depositions filed herewith marked "C", that only that side of this case representing the heirs of Sarah S. Ely have offered any evidence before your commissioner to aid him

in this enquiry. The side representing the heirs of Joseph N.Ely seem to rest upon the ground that it devolves upon the heirs of Sarah S.Ely to show the increment to the estate of Joseph N.Ely while in her hands before they are entitled to said increment, and until they do so show are entitled to nothing, save their one-third share under the will of the said Joseph N.Ely.

It is contended by the heirs of the said Joseph N.Ely that the personal property books of the district in which he lived is not legitimate evidence to show the value of the property left by him at the time of his death. They admit that said books may be evidence to show the assessment of the taxes and the property therein mentioned (Citing Greenleaf on Ev., Vol. 1, §493), but contend that said books are not competent evidence to show the value of said property (Citing Lawyers' Reports Annotated, Vol.5, pp.523-4).

Thus it will be seen that the heirs of the said Joseph N.Ely not only do not bring forward evidence to aid your commissioner in this enquiry, but they object to the only evidence, if such it be, from which the enquiry can be even approximately ascertained.

Your commissioner will not at this point say whether he considers said personal property books admissible evidence to show the value of the property therein listed, but, encumbering his report slightly with matter that may seem prolix and to that extent improper, he desires to show by evidence before him that the assessed value of the personal property as listed in said books was not in all instances its true value.

To illustrate: The personal property books for the year 1882, which was the last assessment made by Joseph N.Ely prior to his death, show that he listed for taxation for that year the following property: 4 horses \$250; 8 cattle \$135; 6 sheep \$6; 19 hogs \$30; 1 wagon \$25; farming implements \$25; 1 clock \$2; 1 sewing machine \$20; household and kitchen furniture \$100; fire-arms \$4; solvent notes, bonds &c. \$4251. Total value of all property listed for taxation \$4848.00.

The personal property books for the same district for the year 1883, the year following the death of Joseph N.Ely, and the first

year that the property was listed for taxation by Sarah S.Ely, show the following: 5 horses \$225; 7 cattle \$100; 4 sheep \$4; 15 hogs \$25; 1 wagon \$30; farming implements \$20; 1 clock \$2; 1 swing machine \$20; household and kitchen furniture \$100; fire-arms \$4; value of solvent notes, bonds &c. \$4910. Total value of all \$5440.00.

Notwithstanding the valuation of the foregoing property as shown by the personal property books, Hiram H.Ely and Mary P.Ely, the two witnesses who seem to have been most intimately acquainted with the personal property of Joseph N.Ely at the time of his death, and with that of Sarah S.Ely after his death, and speaking from the sale bill of Sarah S.Ely, point out articles in the way of household and kitchen furniture and farming implements alone that sold at her sale, eighteen years after the death of Joseph N.Ely, for something like \$200, when in fact these articles were listed for taxation by him eighteen years before at only \$125. Said personal property books for the year 1882 show that Joseph N.Ely listed eight head of cattle at \$135; Hiram H.Ely says that of the eight head thus listed there was a yoke of steers worth \$120, and one witness says Sarah S.Ely sold the steers for \$110, and one of the cows included in the eight head (the one given to R.L.Graham's wife) was worth \$30. Six head of sheep are assessed for the year 1882 at \$1 per head; Hiram H.Ely says they were worth \$2 per head. Nineteen hogs are assessed at \$30; Hiram H.Ely says they were worth \$2 per head.

Passing from the foregoing and coming on down nearer to the final disposition of said property at the sale of Sarah S.Ely, we find from the personal property books for the year 1899, which was the last assessment by Sarah S.Ely during her life, the following assessments: 5 horses \$75; 5 cattle \$100; 11 hogs \$12; 1 wagon \$4; farming implements \$5; 1 clock \$1; 1 sewing machine \$6; household and kitchen furniture \$50; other property not specifically enumerated \$3. Total \$256. On the 27 and 28 days of April, 1900, the personal property left by her at the time of her death, which included that left by Joseph N.Ely as well, when exposed for sale brought \$993.83. Thus it is seen that the value of the property as listed for taxation does not in all instances represent its true value.

But are the personal property books, or certified copies therefrom, prima facie evidence of the value of the property listed therein, and place upon the opposing parties the burden of showing a different value, if they would contest the value? If said books are not prima facie evidence of the value of the property listed therein, then your commissioner is at the end of his row, and is unable to report to the court "of what personal property the said Joseph N.Ely died possessed, of all kinds and descriptions, its nature and value as of the time of the death of said Ely", or "the increments, if any, to the estate so left by the said Joseph N.Ely in the hands of his wife, Sarah S.Ely, stated as of the time of her death, and the nature thereof".

But if said personal property books, or certified copies therefrom, are prima facie evidence of the value of the property listed therein, and this is the view your commissioner takes of the matter, then he is enabled to answer approximately the enquiries directed by the court, and will so attempt.

Your commissioner takes as a basis from which to start his calculation the personal property books for the year 1883. His reason for taking the books of 1883, instead of the books for 1882, is because the 1883 assessment is nearer in point of time to the death of Joseph N.Ely--he having died Dec.11, 1882, and said assessment having been made as of Feb.1, 1883, a little over one month after the death of said Ely. Where there is sufficient ^{evidence} to show to the mind of the commissioner that the value of the property as listed should be increased in order to arrive at its actual value he accordingly makes the increase.

Then starting with the assessment for the year 1883, we find the following: 5 horses assessed at \$225; 7 cattle \$100 (John Z.Ely says there were three cows valued respectively \$45, \$31.60 and \$25, two 2-year-old steers \$40, a yoke of steers \$110, making a total of \$251.60); 4 sheep \$4 (Hiram H.Ely says they were worth \$2 per head, making a total of \$8); 15 hogs \$25 (Hiram H.Ely says they were worth \$2 per head, making a total of \$30); one wagon \$30; farming implements \$20; one clock \$2; one sewing machine \$20; household and kitch-

en furniture \$100; fire-arms \$4; solvent notes, bonds &c. \$4910. Making a total of all personal property owned by the said Joseph N. Ely at the time of his death, as best your commissioner can arrive at, of \$5600.60, say for even numbers \$5600. And this is the value of the personal property of the estate of Joseph N. Ely, with the exceptions following:

As stated above, the \$325, condemnation money for right of way for the L. & N. railroad, was received by Sarah S. Ely. It is insisted by counsel for her heirs that this money belongs to them absolutely by reason of adjudications in said condemnation proceedings. This contention seems to your commissioner to be in the face of law, justice and common reason, and even if said condemnation proceedings could have been a final determination of this question, your commissioner does not believe that the report in said proceedings bears out the idea here contended for. In the report of the commissioner in said proceedings we find this language: "Now with these facts before your commissioner, he is of opinion that the terms expressed in said will are so sole and absolute as to be construed as an absolute title in said Sarah S. Ely to said lands during her life for any and all purposes for which she should use them, and therefore determines that Sarah S. Ely is alone entitled to said damages &c." That is, she is entitled to said damages during her life. She received them during her life, but at her death her estate must account for them to the estate of Joseph N. Ely, if they can be accounted for. It is clearly shown that this \$325 was invested in the purchase of the John T. Hughes and wife eleven acres of land which was deeded to Sarah S. Ely individually. If this contention be true, then Sarah S. Ely with equal propriety might ^{have} converted the whole of the estate of Joseph N. Ely into money, invested it in lands in her own right and thus have deprived the estate of Joseph N. Ely of any thing whatever. Your commissioner holds that the estate of Sarah S. Ely should account to the estate of Joseph N. Ely for this \$325.

It will be seen from the sale bill of Sarah S. Ely's estate, and the deposition of John Z. Ely, that the rents of the real estate of Joseph N. Ely for the present year, 1900, is \$87.50, cash rent.

Out of this sum your commissioner thinks the taxes on the real estate for the year should first be paid, and the residue should then be apportioned between the estates of Joseph N. and Sarah S. Ely in the proportion of 2 to 1. Your commissioner's reason for this apportionment is this: (1), From the beginning of the year to the death of Sarah S. Ely is about one-third part of the year; (2), At the time of the death of Sarah S. Ely, as shown by witness, the soil had been turned and the crop planted, and this labor your commissioner ascertains from experienced farmers is about one-third of the labor required from the beginning to the completion of such crop as was on this land this year. So after deducting the taxes for 1900 of \$24.50, from the \$87.50, we have \$63 remaining to be apportioned between the two estates in the proportion of 2 to 1, which makes \$42 to the estate of Joseph N. Ely, and \$21 to the estate of Sarah S. Ely.

So then from the foregoing we have the following

SUMMARY.

1st. Personal property left by Joseph N. Ely,	\$ 690.00.
2nd. Notes, bonds &c.,	4910.00.
3rd. Condemnation money from L. & N. railroad,	325.00.
4th. $\frac{2}{3}$ net rent for 1900,	42.00.
<u>TOTAL ESTATE OF JOSEPH N. ELY,</u>	<u>\$5967.00.</u>

3rd. The increments, if any, to the estate so left by the said Joseph N. Ely in the hands of his wife, Sarah S. Ely, stated as of the time of her death.

The total fund in the hands of the administrators (not counting interest on notes and bonds to date of payment), is \$10252. From this sum deduct \$5967, the amount ascertained to be due the estate of Joseph N. Ely, and we have remaining \$4285, which is the increment to the estate of the said Joseph N. Ely while in the hands of his widow, Sarah S. Ely. This leaves her estate to pay the whole of the taxes on the real estate for the year 1900, as two-thirds of same was deducted above from the estate of Joseph N. Ely.

SUMMARY.

1st. The Increment of Sarah S. Ely,	\$4285.00.
2nd. One-half interest in 12-acre tract,	6 acres.
3rd. The John T. Hughes & wife tract,	11 acres.

4th. Total of \$8093.95. Notes to death of Mrs. Ely

(See Statement Following.)

STATEMENT MADE AT REQUEST OF JOSEPH N. ELY' HEIRS.

It is insisted by counsel for the heirs of the estate of Joseph N. Ely that if your commissioner takes the personal property books for 1883, to ascertain the value of the property left by Joseph N. Ely at the time of his death, then he ought to take the personal property books for the year 1900, to ascertain the value of the property left by Sarah S. Ely at the time of her death, and that the difference between the two would show the increment to which her estate is entitled, and that the residue should belong to the estate of Joseph N. Ely. The reasoning of said counsel for this view seems to be this: The taxable value of property as a rule is less than its true value, and its value at a sale on time is greater than its true value. Hence by taking the property books for 1883 to ascertain the value of his estate, and the sale bill to ascertain the value of her estate, that thereby we ascertain his estate lower than its actual value, and her estate higher than its actual value.

Your commissioner accordingly reports this idea:

1st. Est. of Sarah S. Ely, as per books for 1900, . . .	\$8750.
2nd. Est. of Joseph N. Ely, as per books for 1883, . .	5440.
INCREMENT TO EST. OF JOSEPH N. ELY,	\$3310.

1st. Funds in hands of Admrs.,	\$10252.
2nd. Est. of Sarah S. Ely, as per books for 1900, . .	8750.
DIFFERENCE BETWEEN ASSESSED & SALE VALUE, . .	\$ 1502.
Deduct net 1/3 rent for 1900,	21.
BALANCE OF DIFFERENCE,	\$ 1481.

Claimed by counsel for Joseph N. Ely's heirs:

1st. Assessed value for the year 1883,	\$5440.
2nd. Gain by sale,	1481.
CLAIMED BY JOSEPH N. ELY'S HEIRS,	\$6921.
Add L. & N. Condemnation Money,	325.
TOTAL EST. JOSEPH N. ELY,	\$7246

1st. Increment of Sarah S. Ely, bro't down,	\$3310.
2nd. Deduct L. & N. Condemnation,	325.
BALANCE OF INCREMENT,	\$2985.
Add net 1/3 rent for 1900,	21.
TOTAL EST. SARAH S. ELY,	\$3006.

EST. OF JOSEPH N. ELY,	\$ 7246.
EST. OF SARAH S. ELY,	3006.
AMT. IN HANDS OF ADMRS.,	\$10252.

Your commissioner is of opinion that the foregoing statement

would more nearly approximate justice if the \$1502 was equally divided, giving \$751 to each of said estates; for, as will be seen from the sale bill, and from the depositions of witnesses, much of the property sold at the sale, especially bacon, corn &c., all of which sold for high prices, was added to the estate by Sarah S. Ely, and it seems to the commissioner that her estate should have some of the advantages of the high prices of the sale-on-time and the otherwise accumulated profits.

Taking this view of the matter, we have:

1st. The Est. of Joseph N. Ely,	\$6505.50.
2nd. The Est. of Sarah S. Ely,	3746.50.
<u>AMT. IN HANDS OF ADMRS.,</u>	<u>\$10252.00.</u>

Now having reported as fully as your commissioner is enabled from the evidence before him he respectfully submits this his report.

This October 8, 1900,

A. M. Goins
.....
Special Commissioner.

+++++
Increment 3882
325 = R.R. Charge
\$3657

Fee for this Report \$ 50.00

Fee charged to

I, A. M. GOINS, Special Commissioner in the above styled cause, do hereby make oath that I was diligently employed not less than 68 hours, in performing the services for which the fee, above stated, is charged, and do so certify, this

3rd day of October, 1900.

A. M. Goins

Special Commissioner.

John J. Ely & J. M. Smythe, Advers

vs. { Comr's Report.

Elizabeth J. Pennington et al.

Filed Oct. 3, 1900,

A. B. Munsey Clerk

Comr's Fee, \$50.00.

In the settlement of the estate of Thomas Pennington, deceased, made by his Administrators, Joseph Ely and Tobias S. Pennington, there was in the hands of said administrators on the 1st day of May, 1859, the sum of \$3146.83; that of this sum Jos. Ely, husband of Sarah S. Ely, received the following sums ~~xx xx~~ as shown by his receipts filed in said settlement, to wit: December 26th 1858 \$175.00; December 31st 1859, \$55.00; and January 4th, 1860, \$100.00; and that said settlement showed a balance in said administrators hands as of that date of \$143.52²; and that I find no other settlement of said estate on record.

B. M. Morgan, clerk.

@ 250

"B. M. 1"

C 25

This deed made this 22nd day of May, in the year 1858, between Joseph Ely and Sarah S. Ely, his wife, formerly Sarah S. Pennington, of the one part, and Tobias S. Pennington and John P. Graham, of the other part, all of Lee County, Virginia, Witnesseth that the said Joseph Ely and Sarah, his wife, for & in consideration of the sum of six hundred dollars, lawful money of Virginia to them in hand paid the receipt whereof they hereby acknowledge, have bargained sold and delivered & by these presents do bargain sell convey and deliver to the said Tobias S. Pennington and John P. Graham, all their right title and interest as children and heirs at law of Thomas Pennington deceased, in & to all the real estate of which Thomas Pennington died seized in the county of Lee and State of Virginia, also all their right title & interest as heirs at law of the said Thomas Pennington, deceased, in & to a certain tract or parcel of land conveyed by Edward Pennington to the said Thomas Pennington to take effect at the death of the said Edward Pennington, which is dated 3rd day of June 1853 and is on record in the clerk's office of Lee; To have and to hold the said interest in all the real estate aforesaid, to the said Tobias S. Pennington and John P. Graham, and their heirs forever. In Witness whereof the said Joseph Ely and Sarah S., his wife, have hereunto subscribed their names & affixed their seals, the day & year before written.

Joseph Ely (Seal.)

Sarah S. Ely, (Seal.)

Va. Lee County, to-wit:

We John Smith and Ira Warner, Justices of the peace of the county aforesaid, do certify that Sarah S. Ely, ^{The} wife of Joseph Ely, whose names are signed to the writing above bearing date on the 22th. day of May, 1858, personally appeared before us in the county afore-

said and being examined by us privily and apart from her husband, and having the writing fully explained to her, she, the said Sarah S. Ely acknowledged the said writing to be her act and declared that she had willingly executed the same and does not wish to retract it. Given under our hands this the 22nd day of May, 1858.

Ira Warner, J.P.

John Smyth, J.P.

Virginia Lee county, to wit:

I, John Smyth, a Justice of the Peace for the county aforesaid do certify that Joseph Ely, whose name is signed to the writing above bearing date on the 22nd day of May, 1858, has acknowledged the same before me in my county aforesaid. Given under my hand this 22nd day of May, 1858.

John Smyth, J.P.

Ira Warner, J.P.

Virginia,

At a court begun and held for Lee county, at the court-house thereof on Monday the 19th day of July, 1858.

This indenture of bargain and sale for land between Joseph Ely and Sarah S., his wife, of the one part, and Tobias S. Pennington and John P. Graham, of the other part, was admitted to record upon the certificate of two justices of this county.

Teste: H. J. Morgan C. C.

(D. P. 13. page 503.) A copy, Teste: B. J. Morgan, clerk.

c. 60¢

"B. M. 2"

C 60

This Deed made this 16th.day of January 1873,between Joseph N. Ely and Sarah S.Ely his wife parties of the first part,and William Pennington party of the second part,all of Lee County Virginia.

Witnesseth,that in consideration of the sum of One hundred dollars to him in hand paid the said Joseph N.Ely and Sarah S.Ely his wife do grant unto the said William Pennington with a generally warranty all his right title and interest in and to one sixth undivided part of a certain tract of land,with the appertenancees thereof,containing eight hundred~~d~~ acres be the same more or less lying on the waters of Sand Lick in Lee County Virginia,the same being one sixth part of undivided tract of Land containing eight hundred acres be the same more or less,to have and to hold the said tract of land aforesaid to the said William Pennington and his heirs forever and the said Joseph N.Ely warrants generally the land hereby conveyed in ~~##~~ witness whereof the said Joseph N.Ely and Sarah S. ~~###~~his wife have hereunto subscribed their names and affixed their seals,the day and year above written.

Joseph N.Ely (Seal)

Sarah S.Ely (Seal)

Virginia, Lee County to-wit;

January the 17th 1873, This day Joseph N.Ely and Sarah S. Ely his wife personally appeared before us W.W.Woodward and Vincent H.Kelly Justices for the County of Lee and State of Virginia an acknowledged their signature ~~to~~ the within Deed bearing date the 16th,of January 1873,to be their act and deed for the purposes within stated.Sarah S.Ely his wife having said said deed read and fully explained to her separte and apart from her husband acknowledged the same to be her act and intent and did not wish to retract the same.Given under our hands and seals this the 17th day of January 1873.

V.H.Kelly J.P. (seal)

W.W.Woodward J.P. (seal)

Lee County Court Clerks Office the 24th day of November 1873.

The foregoing deed from Joseph N.Ely and Sarah S.his wife of the one part to William Pennington of the of the other part all of Lee county and state of Virginia is admitted to record

upon the certificates of W.W.Woodward and V.H.Kelly two Justices
of the Peace in and for the county and State aforesaid.

Teste W.A.Orr, D.C.

A copy. Teste: B.M. Montgomery, clerk.

(D.B.17, page I.)

C 337

Plank 35-

"B. M. 3"

Co. C 35-

Virginia,

At a court begun and held for Lee County, at the court-house thereof on Monday the 18th day of April, 1859.

Tobias S. Pennington, Joseph Ely, Sarah Ely,

John P. Graham and America Graham,Complainants)

against

) In Chancery.

Mourning Pennington, Daniel Garrison, Virginia

Garrison, Amanda Pennington, and Martha

Pennington, Defendants.)

This cause came on again * * * * * And it further appearing that there are three negro slaves which belonged at his death to the said Thomas Pennington, and that they could not be equally divided in kind amongst the said widow and heirs & some of the parties with the assent of the residue of them, being willing to take the said slaves and pay to those of them who get no slaves the excess of their value over the amount of their own respective shares in said slaves, and that they have been so distributed by the said commissioners. It is therefore further adjudged, ordered and decreed that the negro slave named Dennis be, and he is hereby assigned to the said widow Mourning Pennington as her dower in the said slaves at the value of one thousand and fifty dollars, and that she pay to the said heirs the sum of one hundred and ninety dollars, the value of her dower interest in the slaves being \$860.00, to which it appears by said report that she assents; and the negro slave named Jack be, and he is hereby assigned to the complt., Joseph Ely at the value of \$900.00, who consents as appears by the said report to take him at that value and to pay to the other heirs the sum of \$613.33¹/₂, that being the excess beyond the amount of his own share in said slave.

Virginia, Lee county, to-wit:

I, B.M. Morgan, clerk of the county court for said county, do
certify that the foregoing is a true abstract copy from Deed Book No.
14, page 230., a record book in said office.

Given under my hand this the 2nd day of August, 1900.

B.M. Morgan, clerk.

6356

J. M. Smyth & J. Z. Edwards

vs { Extract from
Lecture

Elizabeth J. Cunningham
at 21

Exhibit with asso-
ciation of B. M. Morgan

"B. M. 4"

11-10-35

This deed, made this 25th day of November 1884, between C. L. Ewing and Carrie W. his wife, Mary H. Ewing, R. M. Bales and Margaret W. his wife, Harriet C. Ewing, Catharine E. Ewing, Napoleon E. Beaty and Zorah A. his wife, R. B. Beaty and C. T. Beaty his wife, Samuel E. Beaty and Sallie A. his wife, Cornie J. Beaty all of the County of Lee and State of Virginia, of the first part, and J. B. McLin, H. A. Bayless and David C. Campbell, Trustees of Mt. Carmel Church of the other part; Witnesseth, That the first named parties, for and in consideration of the sum of one dollar to them in hand paid by the said Trustees, have this day granted, bargained, sold and delivered to the parties of the second part, all our right, title and claim in and to a certain lot or parcel of land lying and being in the state and county aforesaid; being the same lot or parcel of land upon which Mt. Carmel Church now stands, and bounded as follows, viz: Beginning at a stake on the main road north of the old store-house of Dr. Joshua Ewing, thence running N. 79° E. 12 poles to a stake in the corner of

said Church lot, Thence S. 15° E. about 15 poles to a stake, so as to make the grounds equal in breadth on the North and South sides of the Church; Thence N. 87° W. to a stake one rod east of the crib or old store house as the case may be, thence N. W. to the Iron Works road ^{containing one and one eighth acres of land be the} and with that to the beginning; ^{same more or less} together with its appurtenances thereunto belonging, to the said Trustees and their successors forever. And the first named parties do covenant to and with the said Trustees that they, the first named parties, will warrant the right of the foregoing land free from the claims of themselves, their heirs, or of any persons claiming under us. In Witness whereof we have hereunto set our hands and seals the day and date first written.

seal C. L. Ewing

Seal.

Seal C.A. C.

Seal

Real M. H. Brown

Seal

Deal

Dr. M. B. Leal

Callie. V. Beatz Seal

Yours truly, Edwin Seal

Seal

Chas. E. E. in Real

Deal

H. G. Brady (real)

Margaret W. Bale, Esq.

Virginia Lee County Court
We John W. Woodward and S. S. Fullerton Justices of the Peace for the County and State aforesaid do certify that C. H. Ewing, The wife of C. L. Ewing and M. H. Ewing his sister and Margaret W. Bales the wife of R. M. Bales and Harriet C. Ewing, and Catherine C. Ewing her sister and Mary A. Beatty the wife of W. E. Beatty and Sallie A. Beatty the wife of Samuel M. Beatty and Corrie J. Beatty the wife of R. B. Beatty and Corrie J. Beatty his sister whose names are signed to the above writing bearing date on 25th day of Nov 1884 Personally appeared before us in the said County and being examined ^{by us} ~~privately~~ and a part from their husbands and having the writing aforesaid fully explained to them They acknowledged that they had willingly executed the said writing to be their act and that they had willingly executed the same and do not wish to retract it given under our hands this 2nd day of June 1885-

J. W. Woodward J.P.
S. S. Fullerton, J.P.

Virginia Lee County Court clerk's office the 21st day of Feb. 1886.

The foregoing deed bearing date Nov. 25th 1884, between C. L. Ewing & Carrie W. his wife, M. H. Ewing, R. M. Bales and Margaret W. his wife, H. C. Ewing, C. C. Ewing, W. E. Beatty & Mary A. his wife, R. B. Beatty & Corrie J. Beatty his wife, S. M. Beatty & Sallie A. his wife & Corrie J. Beatty of the one part

* J. B. McLin, W. H. Byrnes & David C. Campbell Trustees of
Mt Carmel Church of the other part, was this day filed in
this office and admitted to record upon the certificate
of Lee S. Fullerson and J. W. Woodward two Justices of the
Peace for Lee County. Va

Weste John R. Gibson clk.

State of Va: County of Lee to wit;

I Lee S. Fullerson a J. P. for the County
aforesaid in the State of Va do hereby
test R. M. Bales, S. M. Brate R. H. Brate, C. L. Ewing
N. E. Brate whose names are subscribed to the ^{above} writing
bearing date of the ~~25th day of June 1885~~ ^{Nov. 25/84} have acknowledged
the same before me in my office at Leesville
Va on the ^{June 21/85} ~~25th~~ day of ~~June~~ ^{Nov.} 1885
Witness my hand and seal this 21st day of June 1885 Lee S. Fullerson J. P.

C. L. Ewing, R. M. Bales
et als.

To

Deed
J. B. McLin et als
Trustees of Mt.
Carmel Church.

Recorded Deed

Book No 2, Page 334

J. R. Gibson. clk.

To see
J. R. Gibson. clk.

Joseph H. Elys last will and testament this the 20th
day of January 1863 I Joseph H. Ely desire in the first
place that all my just debts be paid and Funeral
expenses also; in the second place I desire that after my
Decease William H. France shall have five Hundred
Dollars; ^{it living if not living nothing} and in the Third place I desire ~~that~~
and Will all the remainder of what I am
Possessed at my Decease Both Real and
Personal to Sarah S. Ely my Wife I desire
that she shall have the sole use and controll
of it so long as she may live; And after
her decease and all ^{her} just debts and Funeral
expenses are paid I then desire one third of
all my Estate at that time Both Real and Personal to
be equally divided Between my wife's Brothers and
sisters if living I will give their names Tobias S
Pennington Virginia Garrison. America Graham now
as Tobias S. Pennington and Virginia Garrison has all ready
deceased I desire that their heirs shall draw their Part
now if America ^{Graham} shall depart this life Before the above
distribution of my Estate is made I will that

her heirs shall draw and equally divide her part,
I desire and will the other two thirds of my Estate:
both Real and Personal to be equally divided between
my Brothers and sisters if living if not I desire
the heirs of those that may have deceased before this
distribution is made of my estate to draw their Fathers
or mothers part and equally divide it between them
I will give the names of my Brothers and sisters
above referred to Jane Smyth; Elizabeth Branson
Hiram Ely; Rachel Jones; Barbry Parsons Frances
Baily; Nimrod L. Ely, Rebecca Reasor; Polly Smyth
Andrew J Ely

Joseph N. Ely
John E. Burk
John P. Graham
Henry Graham

Virginia

At a County Court begun and held
for Lee County at the Court house there
On Tuesday the 19 day of December, 1882
The last will and Testament of Joseph
N. Ely was this day produced in
Court and proved by the oaths of
John P. Graham, John E. Burk &
Henry Graham the subscribing
witnesses thereto, and ordered to
be recorded.

Attest

John R. Libanck

Southwest City
East Hill.

Records of the Mill
Book No 3. 2055
O. R. Gibson etc

3d. R. 65-

See Page.

\$ 256,32 Jan 12th 1884

One day after date we or either of us binde our selves heirs &c,
to pay Sarah S. Ely two hundred and fifty six dollars &
thirty two cents ~~for~~ value received of her, and as to payment
of this note we claim no protection from any law whatever,
witness our hands and seals

William Pennington Seal
Elkanah Pennington Seal

Wm
Pennington
to note
\$256.32

Virginia Lee County to wit
Sarah S. Ely plaintiff complains of
William Pennington and Elkanah
Pennington defendants who have been
summoned &c. of a plea, that they
render unto the plff the sum of two
hundred and fifty six dollars and
thirty two cents which to the plff they
owe and from her unjustly detain
for this that heretofore to wit on the
first day of January 1884, the de-
fendants made their certain writing
obligatory sealed with their seals and
signed with their signature the date
whereof is the day and year aforesaid
by which said writing obligatory the de-
fendants bound themselves jointly and
severally to pay to the plff one day
after the date thereof the said sum
of \$256.32; and as to said debt-
waived the benefit of the Homestead
exemption.

Nevertheless the defendants have not nor
have either of them although often requested so
to do paid said sum of money or any
part thereof to the plff, but the same or
any part thereof to pay to the plff the de-
fendants have each of them kept hidden & wholly
failed to refund & still, that said & refuse to the plff
damage \$256.32. hence said &c. A. S. Pendergast

We the jury find for the defendant
 E. Kanak Pennington

S. H. White

Sarah A. Ely ^P

v. J. Declr. Debt

William Pennington
Bondholder.

1884, Octo. Dec. filed Sum
 " " " " " " " " " " " "

Office Jdgt as to
 Wm Pennington but left
 E. Pennington recovers his
 costs.

Re.	4.77
3	1.00
1A	2.50
20	25
	<u>8.52</u>

Wm Pennington recovers	3.30
Co. E.	.25
A	2.50
	<u>6.05</u>

Def's costs \$1.71

Elkanah Pennington
and
Sarah S. Ely } Plea.

And the defendant says that
the said supposed writing obligatory in
the said declaration mentioned is not his
deed. And of this he puts himself upon
the country.

Richmond, &
Vir. on for Dist.

Fingir

The county to wit:

This day Elkanah Pennington personally
appeared before me the undersigned
and made oath in due form of law
that the matter stated in the annexed
plea is true. Given under my
hand this the 24th March 1885-

J. A. Stoyatt C. C.

Elkanah Pennington
advs 3 Pica Non est fac
Sarah & Ely.

1897 August 11

Virginia

At a circuit continued and held for Lee County at the Court-house thereof, On Monday March 30th 1885-

Sarah S. Ely

vs

Plaintiff
In Debt

Wm Pennington & Elkanah Pennington, Defendants

6 4.97
60.6 25-
S 1.00
A 250
\$8.72

The defendant Elkanah Pennington having appeared and pleaded non est factum was dismissed with his costs. And the defendant William Pennington not appearing; It is considered by the Court that the judgment obtained in the Clerk's office against him for \$256.32 the debt in the declaration mentioned, with legal interest thereon from the 1st day of January 1884, till paid and the costs be made final

Teste: J. A. G. Hyatt Clerk

A copy

Teste: A. B. Munsey Clerk

Sarah S. Ely

as } Copy of Judgment

Wm Pennington et al

Judgment

Clerk 25^c

The Commonwealth of Virginia

To the Sheriff of Lee County; Greeting

We command you, That of the goods and chattels of Wm Pennington late in your Bailiwick, you cause to be made \$ 256.32 with legal interest thereon from the 1st day of January 1884, till payment, which Sarah, S. Ely, lately in our Circuit^{Court} of Lee County has recovered against him by suit for Debt. Also \$ 8.72, which to the said Sarah, S. Pennington, in our Court were adjudged for her Costs in that behalf expended whereof the said Wm Pennington is convicted, as appears to us of record. And that you have the same before the Judge of our said Court at the Court-House on the first Monday in June next, to render to the said Sarah, S. Ely, of the Debt and the Costs as aforesaid. And have then^{and} there this writ. Witness J. A. G. Hyatt, Clerk of our said Court, at the Court House, this 2nd day of April 1885, in the 109 year of the Commonwealth.

J. A. G. Hyatt Clerk

A copy

Lester A. B. Mursey Clerk.

C 4.97
S 1.00
Co. C 25-
A 250,
\$ 8.72

207 Circuit (P)
Mr 30

Sarah S. Ely

Os { Fi Fa

William Pennington

To June Rules 1885

No property found

R.D. Filanary
S.L.C.

Fi Fa.

Clerk 25^{cts}

Inventory of the estate of Sarah S. Ely deceased which on this 27+28 days of April 1900 was sold by her Administrators to become due on January 1st 1901 without interest. Such Articles as were paid down for are so noted.

Name of Purchaser	Articles Sold	Amount
Robt. W. Orr	Box of old irons, note	10
do	1 st Red Cow note	45-00
"	2 Bacon Hams 50 [#] @ 12 $\frac{3}{4}$ "	6 37
"	2 " " 49 [#] @ 12 $\frac{3}{4}$ "	6 25
"	Rent of field near garden	28 50
		<u>\$86 22</u>
F. B. Cox	3 boxes old irons note	80
do	Loom + fixtures "	65-
"	Large spinning wheel "	50
"	1 Bar + 6 crocks	60
"	Warping spools "	20
Emmet F. Cox	One black mare "	18 25-
F. B. Cox	4 boxes nails, hammer &c	10
do	2 crocks + Lard "	10
"	Coffee boiler &c "	23
"	3 dishes + butter plate "	00
Emmet F. Cox	1 set plates "	12
do	1 pitcher, 7 tumblers &c "	36
"	1 Glass lamp "	15-
F. B. Cox	1 Bacon side 44 [#] @ 12 ^c "	5-28
do	1 " Lard 26 [#] @ 12 $\frac{3}{4}$ "	3 31
"	25-lbs lard @ 9 $\frac{1}{2}$ "	2 38
"	5 th Lot of 25 bu. corn 68 ^c "	17 00

	F. B. Cox	Bal. Corn in Large Crib 13 bu	✓ 8	45-
	Emmet F. Cox	Table Cloth	Note	38
	F. B. Cox	Window blind, box shot tools	11	30
	do	Whet Stone		10
				#145-98
#145-98	Aunt. brought over			145-98
	John J. Carter	Lot of old shovels & mattocks		105-
#31.35-	do	2 nd Red cow	Note	31 30
	James S. Parsons	3 bells & 2 reaphooks	"	15-
	do	98 lbs. Flour @ 2 $\frac{1}{4}$	"	2 20
	"	49 $\frac{3}{4}$ lbs side bacon 12 $\frac{1}{2}$	"	6 35-
#14.64	"	+ 47 $\frac{1}{2}$ " " " 12 $\frac{1}{2}$	"	5- 94
	F. B. Jesse	3 old mowing scythes	"	60
	do	1 box horse shoeing tools	"	65-
	"	1 small spinning wheel	"	35-
	"	old hames, chains, straps	"	20
	"	3 old hay forks	"	90
	"	Blacking brush, brass kettle	1.45-	1 50
5-90	"	Bucket	Note	70
	John G. Ely	Cradle & scythe; soap	2.75- 1.45- Note	4 20
	do	Jar honey, 1 bed cover	4.95- 2.00	6 95-
	do	bed cover; bed cover	.45- .35-	1 80
	"	bed cover doz. bags	1.00 1.05-	2 05-
	"	3 yds. flannel, curtains	60- 2.5-	85-
	"	Bed & bedstead	1.60- (25-	14 00
	"	pr. balances, pail & bucket	2.80- 2.65- 50	1 85-
	"	Rifle gun; soap, seed cover	2.5- 15-	5- 95-
	"	Syringe; tooth brush box		40

44.55	John G. Ely	Rent of Mulberryfield pasture	6 50
	John H. Pennington	Corn planter, barrels & kegs	75-
	do	Grain boxes, jar & 2 crocks	25-
	"	5-crocks & pitcher, bed & stand	18 90
	"	Stone Kettle; hay stack	11 25-
	"	Picture; 2 sheets	1 40
	"	3 rakes & locust log, sled & failings	5-1
49.06	"	Rent of grave yard field	16 00
#291.48	Carried Over		291 48
291.48	Brought Over		291 48
	J. T. Hughes	Reel, Ceiling	2 05-
	do	+ Crosstie wood; trunk	40
	"	shucks; 55# bacon @ 12	7 80
	"	25-lbs lard; lounge bed	3 00
	"	Mirror; 8 1/8 bu corn	5 24
20.49	"	Rent for pasture on Big hill	2 00
	J. M. Smyth	Soap; Molasses	76
	do	Coverlet; Doz. Silver spoons	4 06
	"	Empty bottles; Stone boiler	67
57.94	"	Pot, bucket & pan; tumblers, jelly	45-
	Joseph Eley	5-bu wheat @ 19; 10 bu @ 81	16 10
	do	Boards, shingles, Baker & lid	8 65-
	"	Baker & lid, 2 pans, table & cloth	75-
	"	Pitcher, 3 glasses & jelly	25-
30.62	"	50 lbs. Lard @ 9 1/2; lard tub	4 87
	Hiram H. Eley	bbl. vinegar, chest	3 60
	do	Clothes wire, Dog iron	1 20
	"	47 lbs. Bacon @ 12; 26 Ham @ 12 1/2	8 89
22.56	"	14 1/4 bu. Corn @ 60	8 87

7.20	Chas. Short	2 bee stands	Note	7 20
	W. T. Gillee	2 " "	"	6 15
	do	30 doz. rats @ 19	"	5 70
16.89	"	14 bu. shattered Corn @ 36¢	"	5 04
82.50	M. H. Graham	Gray mare & colt	Note	82 50
76.50	J. H. Graham	Gray horse	do	76 50
25.60	Fred P. Brooks	3rd Red Cow	do	25 60
32.30	J. H. Wilson	9 hogs	do	32 30
	E. E. Johnson	plow gears, 2 crs. apple butter	"	2 25
7.05	do	red covers, counterpane	"	4 80
10.64	Bailey & Feltner	185-bb chickens @ 5¢	Note	10 64
629.77				629 77
629.77		Amts. brought over		629 77
	E. R. Garrison	2 quilts; blanket	Note	3 40
	do	bed & stead, 2 crs. apple butter	"	8 70
14.20	"	4 hens & chickens; bible	"	2 10
10.00	Geo. W. Smith	Bed & stead	Note	10 00
	E. P. Garrison	Plow gears; stellyards	Note	1 30
	do	Side bacon 47# @ 12¢	"	5 64
	"	2 bbs. & salt, 17 bu. corn @ 3¢	"	8 05
16.55	"	Table Cloth, Pistol	"	1 56
	Thomas Johnson	7 old axes; bed & stead	Note	11 65
	do	3 augers; 2 baskets	"	90
	"	42 doz. rats @ 20¢	"	8 40
	"	5-table clothes	"	1 68
23.14	"	Pillow shams; pillow slips	"	51
	Creed Killee	Wood, wagon	Note	20 70
	do	old nails, door locks	"	50

40.95	Creed Sicley	25 bu. Corn @ 67 ^{16.75-V} ; rent	Note	19.75
	Ad M. Dinger	Oliver plow; poplar chest	"	6.85
	do	8 chains; Sewing machine	"	16.05
34.50	"	Safe stop, Larrow	"	11.60
	M. F. Litton	2 Counterpanes, side saddle	Note	16.25
19.25	do	1 doz. bags, Silver knives & forks	"	3.00
	J. G. Reason	Cook stove & vessels	Note	13.60
14.05	do	Tea cups & saucers; tumblers &c	"	45
17.90	Teru. Smyth	2 bu's nails; 25 bu corn @ 70	Note	17.90
7.10	A. L. Tritt	55 lbs. Bacon sides @ 12 ³⁴	"	7.10
20.12	Chas. Harrison	161 " " " @ 12 ¹²	"	20.12
6.38	Teru. Smyth	51 " " " 12 ¹²	"	6.38
	L. P. Ely	42 " " " 12 ¹²	"	5.28
	do	24 " " Lard 12 ³⁴	"	3.86
9.71	do	2 Chambers; table cloth	"	1.40
863.62		Ants. Carried over		863.62
863.62		Ants. brought over		863.62
18.75	J. P. Kelly	25 bu. Corn @ 75	Note	18.75
34.75	W. M. Stewart	25 " " @ 70 + 25 bu @ 69 ²	"	34.75
	Jas. P. Ely	5 bu potatoes @ 50	"	2.50
8.65	do	Rent of garden	"	6.15
25.00	J. B. & L. B. Ely	Rent for 1/2 Hughes field	"	25.00
950.77		Notes taken for this sum		950.77
	N. S. Leoy	Shovel & Mattock, Sieve	Pd	80
2.50	do	Hand Saw; 4 shovels	"	1.70
	George Ely	3 Oed bells + 2 reaf hooks	"	10
	do	2 Mauls + wedges	"	20
	do	4 Crocks, plow stock	"	5.7
	"	Frying pan, Bell rap, Krench &c	"	60

2.82

George Ely

¹⁰
 Coffee mill, oil can, picture, ^{1.05-}spoons 1 15-
²⁰
 Table, lamp &c 20

A. J. Ely

⁹⁵⁻
^{3.5-}
 Cradle & ceythe, 4 oed. tidles 1 50
¹²
^{2.05-}

do

2 pad locks, bed quilt 2 17

Elbert Myers

Ceythe, Cradle & oed. ceythe 1 50

Henry Jackson

²⁵⁻
⁵⁰
 3 joints stone pipes, 3 augers & chisel 75-

A. J. Reason

⁶¹
²⁰
⁶⁰
 14 oed. plows, 1/2 bu. meas. basket 1 41
²⁵⁻
⁷⁰

Rich W. Ely

Com plaster, pot & wash tub 95-

do

²¹
⁵⁴
⁵⁵⁻
 Audirous, Trunk, 5 chairs 1 30

S. T. Goldiron

1/2 bu. Measure, 2 racks & beams 25-

J. P. Kelly

¹⁰
³
⁵⁻
 Hand saw, sled, broom 18

Thomas Luntford

^{1.35+}
^{5.00}
⁵⁰
 Soap, saw, 12 fruit cans 6 85-
³⁰

do

2 bed quilts 30

Jas. H. Ely

^{1.10}
¹⁶
 Large Kettle, oed. cupboard 1 20

Robt. W. Sneyth

10 hoes & grind stone 47

do

²⁵⁻
^{1.65-}
 Cutting knife & box, double plow 1 90
^{.56}
^{4.87}

Sue E. Sneyth

Pickles & stand, 4 quilts 5 43

Tone Williamson

^{8.80}
^{1.00}
 3 bee stands, wheel barrow 9 80

Aunt. Over

41 78

Aunt brought over

41 78

Sam Cecil

16 empty bee gums 65-

Geo. W. King

Heifer calf 15 30

W. H. Gray

pr. oed. gears 23

John Rivers

plow & stock 1 50

Alex Carnes

old plow & stocks 50

Sam W. Allinger

ax, yoke, double tree, chain, stretchers 1 50

Chas. Waholen

Honey 1 65-

H. F. Kilburn

8 filled fruit cans 1 20

Joc Brewer	^{1.25-V} 2 quilts; ⁶⁵⁺⁵⁰ 6 sheets	2	40
J. M. Keele	2 blankets	1	400
Henry Myers	^{1.30} blanket, ¹⁰ Baker & lid	1	40
M. E. Orr	⁶⁰ Counterpane, ³⁵ brass kettle		95
Frank Wilson	1 Doz. bags	1	33
W. M. Bailey	4 sheets		65-
D. S. Reason	^{85-V} 4 sheets; ^{1.00 V} 2 baskets	1	85-
Geo. H. Myers	⁶⁰ 2 chairs, ^{3.46} cupboard, ⁴⁰ saddle blanket	4	40
do	⁷⁰ Sausage mill		70
Sarah E. Myers	^{1.40} quilt	1	40
F. F. Belcher	2 chairs		55-
J. D. Russell	16 yds. Domestic	1	05-
D. H. Howard	³⁰ Clothes brush		30
Geo. Smyth	⁶⁰ Sheep shears, ²⁰ books		80
Jane Tritt	Large spoon		12
Sarah A. Ely	²⁵⁺ Small brass kettle, ²⁰ table & pan		45-
John H. Ely	^{35-V} X Cut saw		35-
Geo. Spangler	^{35-1/2} 2 slop buckets, ^{2.15-V} saddle bags	2	50
L. B. Ely	¹⁰ 2 Jugs		10
Mary Kelly	¹⁶ Skillet, ⁶⁵⁺ teacups & saucers		75
Phoebe Graham	¹⁷ Fire shovel, ¹¹ bread & pie pans		28
do	preserve & dessert dishes		21
"	¹⁸ Glass dishes, ⁶ Crock		24
			\$90 61
Henry Myers	^{1.5-8-V} 1 pr. Check lines, ¹⁵ Baker &c	1	65
E. L. Stewart	¹⁵ Blanket, ¹⁵ pillow slips		30
Mirre Pennington	¹⁶ 2 buckets & pan		05-
Geo. P. Ely	¹⁰ Saddle, ¹⁰ Brooms		20
L. W. Myers	¹⁵ Buckets, ⁵⁻⁰ pans & cups, knives &c	1	65

L. W. Myers	30 ✓ pan, bottles & belt, umbrella	18 ✓	✓ 48
Louise Ely	25 ✓ Tray, bucket & dipper	05 ✓	✓ 30
do	1.00 ✓ Clock, pad lock, chains	10 ✓ 5	✓ 1 15
H. B. Ely	15 ✓ Lantern, 25 lbs lard	2.50 ✓	✓ 2 65
do	102 ✓ Table 24 Dg. oats @ 16 $\frac{2}{3}$	400	✓ 4 10
L. M. Gion	36 ✓ Plates		✓ 36
S. L. Parsons	15 ✓ 2 Cov. dishes, plates, lard	41 25 ✓	81
W. R. Gary	20 ✓ Dish, books, table cloth	25 ✓ 15 ✓	60
do	10 ✓ Window curtains, pillow slips	16 ✓	26
Thomas Graham	25 ✓ 2 Small dishes	15 ✓	25
Lie Ripson	15 ✓ Dish, old cups & saucers		35
H. B. Graham	15 ✓ Salt Set		05
H. C. Ely	15 ✓ 2 glass jelly, lamp, book	25 ✓ 15 ✓	✓ 55
do	oats		✓ 25
Betty Reaxor	12 ✓ Spoon holder	12 ✓	✓ 10
Sarah A. Ely	21 ✓ Baking powders, minor	5 ✓ 4.65 ✓	24
Sam R. Cox	80 ✓ Dishes & sugar bowls	1.45 ✓	15
John B. Ely	10 ✓ Plates, bowls & dish		12
A. L. Tritt	10 ✓ 2 bacon bowls		26
J. M. Smyth	10 ✓ 4 pails, soap, ropes, 7 bu corn		5 02
John Kirk	10 ✓ Churn, table		2 25
Mary Pennington	10 ✓ Sifter		10
Tem. L. Smyth	10 ✓ Hackle & buckets, Coffee mill		15
Louzo Ely	10 ✓ 2 tubs		10
Ad. M. Clieger	70 ✓ 2 baskets		70
Aunt. brought over			114 81
Jane Ely	Satchel		15

W. S. Ely	Book ¹⁰	10
A. H. Gion	Hand towels, wool cards, shears ^{30^v 5- 40}	75
Beck Ely	4 towels ³⁸	30
J. M. Smythe	6 pillow slips, oil paint &c ^{20+15^v}	73
J. J. Ely	4 towels, picture &c, Flax ^{25- 5- 20}	50
Sarah A. Ely	table, Combs ^{95- 25^v}	95
J. T. Hughes	Whip, stove wood ^{10^v 25^v}	35
F. B. Cox	Candle molds, oats corn & hay ^{06 2. 22^v}	2 28
Creed Kiley	Candles, brooms ^{10^v 5^v}	15
Harry Barton	41 doz. oats @ 16 $\frac{2}{3}$	6 83
L. P. Ely	Plow beam & handles	25
Irma Suavely	Sack	10
George Peters	Lounge bed, tick & quilt &c	2 25
Charles Ely	Plates	65

Cash received at Sale 130 86

Notes taken 950 77

Total Sale bill & rents \$1681 33

Total for rents 87 15

Total for personal property \$994 18

We rented the lands by the consent of those in interest present on day of Sale. The lessee's are to give possession by Jan. 1st, 1901; or immediately after Nov. 1900, Circuit Court if required. Given under our hands this May 10th 1900

John M. Smythe
John J. Ely } Admins.

Inventory of Notes &c payable to Sarah S. Ely dec'd and which have come to our hands this April 26th 1900.

- | | |
|---|--------|
| (1) Note signed by M. P. & D. P. Ely dated April 14/97
+ due 1 day after date | 20 00 |
| (2) Note signed by J. H. & E. T. Krahane dated
April 30 th 1898 due 1 day after date | 50 00 |
| (3) Note signed by Lora E. Kish & J. H. P. Kelly
dated April 14, 1897 + due 1 day after date | 159 00 |
| (4) Note signed by G. L. & J. M. Shelburne dated Nov.
16, 1899 + due 12 months after date | 100 00 |
| (5) Note dated 4/11/98 + signed by J. H. Pennington
and due one day after date | 2921 |
| (6) Note dated 10/11/99 signed by J. H. Penning-
ton + due 1 day after date | 20 00 |
| (7) Note dated 4/5/99 signed by J. H. Pennington
+ due one day after date | 20 00 |
| (8) Note dated 11/1/99 signed by J. H. Pennington
and due one day after date | 35 06 |
| (9) Note dated 8/22/99 signed by W. T. Kelley
+ due 1 day after date | 87 50 |
| (10) Note dated Jan 1 st 99 signed by L. J. C. Flaw-
ary & Bro. and due 1 day after date | 626 51 |
| (11) Note dated Oct. 26/99 signed by W. T. Orr, J. M.
Smyth Jr. & John Smyth, due 1 day after date | 100 00 |
| (12) Note dated 1/4/99 signed by S. E. Shelburne &
J. F. Witt + due + day after date | 100 00 |
| (13) Two Notes each dated 10/2/99 signed by John B.
Myers & J. H. Pennington + each \$100.00 + due 1 day | |

after their date	200 00
(14) Note dated 4/25/99 & signed by J. H. Pennington and John P. Myers & due 1 day after date	200 00
Amt. Carried over	1752 28
Amount brought over	1752 28
(15) Note dated 1/1/99 & signed by W. T. & M. S. Silly and due one day after date	220 41
(16) Note dated Jan. 1/1/900 signed by H. B. Kra- ham and due 1 day after date	100 00
(17) Note dated 1/4/99 signed by John P. Myers and L. P. Ely & due 1 day after date	113 00
(18) Note dated Nov. 14/99 signed by L. V. & L. C. Shelburne & J. F. Witt & due 1 day after date	600 00
(19) Note ^{dated} signed 3/2/99 signed by D. L. Jesse & due 1 day after	106 00
(20) Note dated 12/6/99 signed by Sam Cecil & J. J. Ely & due 1 day after date	25 00
(21) Note dated 1/10/1900, signed by Samuel Tritt & J. F. Witt & due 1 day after date	100 00
(22) Note dated 1/6/1900 signed by R. F. Oakley and A. J. Cox and due 1 day after date	78 00
(23) Note dated 3/30/1900 signed by John S. Ely and W. P. M. Stewart and due 1 day after date	100 00
(24) Note dated 2/12/1900 signed by Orlena & J. K. Parsons & John M. Smyth Jr. & due 1 day after	100 00
(25) Note dated 3/26/1900 signed by J. T. & A. J. Hughes & due 1 day after date	10 00
(26) Note dated 3/3/1900 signed by A. J. Saver	

due 1 day after date			30 00
(27) Note dated 2/5/1900 signed by J.D. Russell and Mr. N.S. Barron & due 1 day after date			50 00
(28) Note dated 1/18/1900 signed by E.B. Litton & Mr. T. Killey & due 1 day after date			25 00
(29) Note dated 2/24/1900 signed by John P. Kelly and Mr. V. Barker and due 1 day after			130 00
(30) Note dated 3/16/1900 signed by J.B. Wolf & J.B. Bygal & due 1 day after date			250 00
Amt. Carried forward			\$3789 69
Amt. brought forward			3789 69
(31) Note dated 3/3/1900 signed by Mr. E. Barker and John P. Kelly, due 1 day after date			40 00
(32) Note dated 2/24/1900 signed by America L. Graham due 1 day after date			212 00
(33) Note dated 5/8/96, signed by H.J. & M.E. Russell and due 1 day after date			50 00
(34) Note dated 1/1/98 signed by J.F. & E.J. Skiff & due 1 day after date			78 00
(35) Note dated 5/3/94 signed by H.H. Ely and for Int. from 5/3/94 to 9/24/94	6	31	
Cr. on note 9/24/94		17	
	6	48	
	5	00	1 48
(36) Note dated 2/13/97, signed by F.B. & M.E. Cox	10	00	
Int. from 2/13/97 to 4/19/99		1 25	
Cr. on note dated 4/19/99	11	25	
	2	90	8 35
(37) Note dated 1/1/96, signed by J.J. & Mary P. Ely,	347	92	
Int from 1/1/96 to 1/1/1900	83	50	
Cr. on note 1/12/98 \$20.00 + 1/1/1900 \$32.50	431	42	
	52	50	478 92

(38)	Note dated 1/4/97, signed by J. K. Kelly	252	49		
	Int. from 1/4/97 to 11/26/98	13	23		
	Cr. on note dated 10/26/98	265	72		
		27	64		
	Int. from 10/26/98 to 11/15/98	238	68		
		15	04		
	Cr. on note endorsed dated 11/14/99	253	12		
		52	86	200	26
(39)	Note dated 1/27/96 signed D. L. & Co.				
	Jesse, H. T. Parsons, E. K. Pennington				
	H. H. Hobbs, J. B. Barker & A. K. DeBusk	300	00		
	Int. from 1/27/96 to 1/27/97	18	00		
		318	00		
	Cr. endorsed on note dated 1/27/97	18	00		
		300	00		
	Int. from 1/27/97 to 1/27/98	18	00		
		318	00		
	Cr. on note 1/27/98	18	00		
		300	00		
	Int. from 1/27/98 to 8/27/98	10	50		
		310	50		
	Cr. 8/27/98 endorsed on note	25	00		
		285	50		
	Int. from 8/27/98 to 1/27/99	7	14		
		292	64		
	Cr. on note 1/27/99	17	36	275	28
	Ant. Carried forward			\$533	98
	Ant. brought over			\$533	98
(40)	Note dated 8/4/95 signed by J. E. Graham	450	00		
	Int. from 8/4/95 to 1/9/1900	119	50		
		569	50		
	Cr. on note 1/9/1900	100	00	469	50
(41)	Note dated 1/1/95 signed by J. E. & J. H. Graham	379	61		
	Int. from 1/4/95 to 12/16/96	44	60		
		424	21		
	Cr. 12/16/96 on note	75	00		
		349	21		
	Int. from 12/16/96 to 9/25/97	16	29		
		365	50		
	Cr. on note 9/25/97 \$20.00 & 9/29/97 \$3.00	23	00	342	50
(42)	Note dated 2/17/98 signed by F. P.				

Buegardner & J. B. Witt	200 00		
Int. from 2/17/98 to 2/17/99	12 00		
	212 00		
Cr. on note dated 2/17/99	12 00	200 00	
(43) Note dated 3/31/97 signed by J. H. P.			
Barrow & C. S. Flannery	400 00		
Int. from 3/31/97 to 3/9/1900	72 00		
	472 00		
Cr. 4/1/99 \$2000, 4/1/99 \$29.44 + 3/9/1900 \$24.00	23 44	398 56	
(44) Note dated 1/10/98 signed by R. W. & L. D. Orr	124 72		
Int. from 1/10/98 to 1/10/99	13 48		
	238 20		
Cr. on note Jan. 10, '99	13 48		
	224 72		
Int. to Jan. 10, 1900	13 48		
	238 20		
Cr. on note Jan. 10, 1900	145 20	93 00	
(45) Note dated 4/19/98 signed by John K. Smith	15 00		
Int. from 4/19/98 to 4/19/99	90		
	15 90		
Cr. 4/19/99	90	15 00	
(46) Note dated 11/13/96 signed by W. L. Parsons & W. S. Hurst due Jan 1 st 1898	106 80		
Cr. on note Dec. 28/97	70 00		
	36 80		
Int. from 1/1/98 to 1/1/99	2 20		
	39 00		
Cr. Jan 1 st 1899	2 10	36 90	
Carried forward		6689 44	
Amount brought over		6689 44	
(47) Note dated 9/24/95 signed by H. B. & Joseph Rely	25 00		
Int. to 7/25/98	4 25		
	29 25		
Cr. on note 7/25/98	5 00		
	24 25		
Int. from 7/25/98 to 12/26/98	60		
	24 85		
Cr. Dec. 26, '98	1 40		
	23 45		
Int. from 12/26/98 to 8/30/99	95		

	Cr. Aug 30, '99	24 40	
	Aut. to 10/4/99	5 00	
	Cr. 10/4/99	19 40	
	Aut. to 12/22/99	16	
	Cr. Dec. 22, '99	19 50	
	Cr. by Aut. endorsed on note to 7/25/98	5 00	
(48)	Note dated 7/24/92 signed by L. W. Gion + R. E. Litton	14 50	
	Aut. from 7/24/92 to 6/7/93	26	
	Cr. June 7, 93	14 70	
	Aut. from 6/7/93 to 7/23/94	5 00	
	Cr. July 23, '94	9 70	
	Aut. from 7/23/94 to 7/23/95-	4 25	5 45
	Cr. July 23, '95-		
	Aut. from 7/23/95- to 6/21/97	300 00	
	Cr. June 21st 1897	16 50	
	Aut. from 6/21/97 to July 22/99	316 50	
	Cr. July 29/99	18 00	
(49)	Note dated 1/1/92 signed by E. K. Pennington + D. L. Jesse	298 50	
	Aut. from Jan 1/92 to 1/5/95-	19 40	
	Cr. Jan 5th 1895-	317 90	
	Aut. from 1/5/95 to 10/24/95-	18 00	
	Cr. Oct 24th 1895-	299 90	
	Aut. from 10/24/95 to 2/28/99	17 99	
	Cr. 5/17/97, \$10.00, 3/10/98, \$10.00 + 2/28/99, \$10.00	317 89	
	Aut. Carried over	18 00	
	Aut. brought over	299 89	
		34 47	
		334 36	
		36 00	
		298 36	
		37 26	
		335 62	
		36 00	299 62
		200 00	
		36 00	
		236 00	
		50 00	
		186 00	
		10 05	
		196 05	
		30 00	
		166 05	
		31 55	
		197 60	
		30 00	167 60
			\$7162 11
			\$7162 11

(50)	Note dated 1/1/99 signed by L. D. & John P. Myers	122	41		
	Int. from 1/1/98 to 1/2/1900	36	70		
	Cr. Jan 2, 1900	159	11		
		100	00	59	11
(51)	Note dated 1/24/96 signed by K. W. H.				
	+ Sarah E. Myers	100	00		
	Int. from 1/24/96 to 9/14/97	4	85		
	Cr. Sept 12, '97	104	85		
		6	00		
	Int. from 9/14/97 to Oct 18, '98	98	85		
	Cr. Oct. 18, 1898	6	50		
		105	35		
	Int. from 10/18/98 to Sept. 20, '99	6	00		
	Cr. Sept. 20, '99	99	35		
		5	50		
		104	85		
		6	00		
		98	85		
		50	00	148	85
(52)	Note dated 1/4/99 signed by E. M. Kilbert				
	R. L. Lucas & E. S. Flannery	500	00		
	Int. from 1/4/99 to Jan 4, 1900	30	00		
	Cr. Jan 4 th , 1900	530	00		
		30	00	500	00
(53)	Note dated 12/27/98 signed by V. R.				
	Aistrop & W. P. M. Stewart	75	00		
	Int. from date to Dec. 26 th 1899	4	50		
	Cr. Dec 26, 1899	79	50		
		4	50	75	00
(54)	Note dated 1/4/99 signed by A. J. Litton				
	+ Harve Cecil	100	00		
	Cr. Jan 4, 1899	6	00		
	Int. to Jan 1, 1900	94	00		
	Cr. Jan 1 st 1900	5	64		
		99	64		
		6	00	93	64
(55)	Note dated 8/27/98 signed by				
	James Parsons & Tony Williamson	25	00		
	Int. from date to 9/4/99	1	28		
	Cr. Sept 4 th 1899	26	28		
		15	00		

Int. from 9/4/99 to Dec 10, 99		11	28		
Per. Dec 10, '99		11	18		
		8	46	3	39
Amount Carried forward				8042	10
(56)	Note dated 1/1/1900; signed by Wm. Sweeney	283	34		
Int from its date to 3/21/1900		3	82		
Per. March 21/1900		287	16		
		50	00	237	16
57	Note dated 11/1/94, signed by A. F. & J. S. Cox	50	00		
Int on same from date to 11/16/95		3	13		
Per. Nov. 16/95		53	13		
		3	00		
Int from 11/16/95 to 11/10/96		50	13		
		3	00		
Per. Nov. 10/96		53	13		
		3	00		
Int from 11/10/96 to Oct 26/97		50	13		
		2	95		
Per. Oct 26/97		53	08		
		3	00		
Int from 10/26/97 to Nov 19th 1898		50	08		
		3	08		
Per. Nov 19th 1898		53	16		
		3	00		
Int from 11/19/98 to 10/13/99		50	16		
		2	84		
Per. Oct 13/99		53	00		
		3	00		
		50	00	50	00
(58)	Note dated 9/1/87; signed by C. L. Naublen	257	74		
Int from 9/1/87 to 2/19/89		22	55		
Per. Feb. 19th 1889		280	29		
		50	00		
Int from 2/19/89 to 12/29/90		230	29		
		25	71		
Per. Dec 29th 1890		256	00		
		100	00	156	00
(59)	Note dated 2/12/87 signed by J. G. Yeary				
+ Jas H. Spangler					
Int from date to 9/21/1889		70	00		
		10	95		
Per. Sept 21/89		80	95		
		20	00		
Int. from 9/21/89 to 8/16/94		60	95		
		14	92		
		75	87		

Per Aug 16 /94	48	80		
	30	00		
Int. from 8/16/94 to 3/25/96	48	84		
	4	80		
Per March 25/96	53	64	48	64
	5	00		
Total amt. of notes that came to our hands			85	33 93
Cash received				
At her house after her death			80	48
"Remington Gap Bank to her credit			46	43
Check signed by J. A. G. Hyatt				
& paid to us			500	00
Total			636	91

Recapitulation:				
Amount of notes of all kinds			85	33 93
Cash rec'd, check & cash in Bank			636	91
Sale bill for which notes were taken			930	77
Cash received at sale for personally			130	86
Total value of Estate			10252	17
John M. Smyth				
John J. Ely 3 Admrs.				

Virginia Lee county, to wit:—
 I, Robt L. Remington Comr. of
 Cts for the County Court for Lee County
 do certify that the foregoing Sale Bill
 & Inventory of the estate of Sarah S. Ely
 was this day presented to me for ap-
 proval & having examined the same &
 found the same & found the same

in proper form, they are each hereby
approved for recordation. Given un-
der my hand this the 21st day of
May, 1900.

Robt L. Pennington, Commr.

Virginia, Lee County, to wit:

In the Office of the clerk of the
county court for said county, the
22nd day of May, 1900. This inven-
tory was presented and together
with the Certificate thereto an-
nexed, admitted to record.

Teste: B. M. Morgan, clerk

A copy, Teste: B. M. Morgan, clerk

Sarah S. Ely
Appraise &
Sale Bills

. Clerk \$4.50

CERTIFICATE OF
~~ORDER OF~~ PUBLICATION.

I, A. M. Goins, Editor of the SOUTH-
WEST VIRGINIAN, a weekly newspa-
per published at Jonesville, Lee County,
Va., do hereby certify that the annex-
ed notice was published in said paper
once a week for four successive weeks,

commencing on the 13th day of

December, 1900.

A. M. Goins, EDITOR.

FEE, \$9 20
100

Land Sale.

JOHN Z. and MARY P. ELY }
vs, } In Ch'cy,
J. M. SMYTH et als.

To carry out the decree entered in the
above styled pending cause, on the 17th
day of November, 1900, now in the Circuit
Court of Lee County, we will proceed at
the front of Lee courthouse on the 21st
day of January, 1901, and at public out-
cry, to the highest bidder, to sell the fol-
lowing described property, to-wit:

(1) The tract of land conveyed by J. T.
Hughes et als to Sarah S. Ely, and said to
contain eleven acres and commonly known
as the "Hiram" bottom.

(2) The tract of land devised to Joseph
N. Ely by his father, and said to contain
about seventy acres, and joins the lands of
John Z. Ely and others.

(3) The tract of land which G. W.
Hughes and wife on Oct. 19th, 1868, con-
veyed to Joseph N. and Sarah S. Ely
jointly, and said to contain twelve acres.

(4) And the residue of the lands of
Joseph N. and Sarah S. Ely and known as
the "Home Place."

These are valuable lands—good wa-
ter and timber on them. Sales to be made
as to acreage at the hazard of the pur-
chaser. Sales to be made upon the fol-
lowing terms, to-wit: Enough cash to
pay cost and commission, and the remain-
der in two equal installments due in one
and two years from the date of sale. The
purchaser will be required to execute
bonds bearing interest from the date of
sale with good personal security.

This 12th day of December, 1900.

E. W. PENNINGTON and
J. C. NOEL,

Special Commissioners.

The bond required by the Court of said
Commissioners has been given before me.

This the 12th day of December, 1900.

A. B. MUNSEY, Clerk.

Notice of Land Sale.

ORDER OF PUBLICATION.

John B. & Mary P. Ely

VS.

IN CHANCERY.

J. M. Smyth et al.

FEE \$ $\frac{9.20}{100}$

LAND SALE!

John S. and Mary P. Ely

vs

J. W. Ely et al

IN CHANCERY.

To carry out the decree entered in the above styled pending cause, on the 17th day of November, 1900, ~~1899~~, now in the Circuit Court of Lee County, I will proceed at the front door of Lee courthouse on the 21st day of January, 1901, ~~1899~~ and at public outcry, to the highest bidder, to sell the following described property, to-wit:

- (1). The tract of land conveyed by J. C. Hughes et als to Sarah S. Ely, and said ~~to~~ contain eleven acres, and commonly known as the "Hiras" bottom;
- (2). The tract of land devised to Joseph E. Ely by his father, and said to contain about seven and a half acres, and joins the lands of John E. Ely and others;
- (3). The tract of land which J. W. Hughes & wife on Oct. 19th., 1898, conveyed to Joseph E. & Sarah S. Ely jointly, and said to contain twelve acres; and,
- (4). The residue of the lands of Joseph E. & Sarah S. Ely and known as the "Hiras place". There are valuable lands; good water and timber on them. Sales to be made as to acreage at the desire of the purchaser. Sales to be made or enough thereof to pay \$_____ and the costs of this suit and the commissions of sale, upon the following terms, to-wit: Enough cash to pay cost and commission, and the remainder in two equal installments due in one and two years from the date of sale. The purchaser will be required to execute bonds bearing interest from the date of sale with good personal security.

E. B. Huntington and J. C. Noel

Special Commissioners

This 12th day of Dec., 1900, 1899.

The bond required by the court of said commissioners has been given before me this the 12th day of Dec., 1900.

----- Clerk.

John Z. and Mary P. Ely Plffs } In Chancery
vs. }
J. M. Smyth et al. Defts }

To the Hon H. A. H. Skene, Judge of
the Circuit Court for Lin County:

Your undersigned, who was
on the 17th day of Nov., 1900, appointed
in the above styled cause Special
Commissioners to sell the lands of
the late Joseph M. Ely and Sarah
S. Ely dec'd., and described in the
files of the papers of said cause, beg
leave to report that after advertis-
ing the time, terms and place of
sale of said land in the South-
West Virginian, a news paper
published at Janeville, in Lin
County & Va., for four successive
weeks, and by posting written notices
thereof at the front door of the
Court-house of Lin County, at the
Post-office in Poundington Gap,
and Dryden and also at Olney
Station Va., for 30 days, and after
giving the bond required by said
leave in the penalty of \$10000
on Monday, January, 21st 1901,
that being a court day, at the
front door of the Court-house of
Lin County between 11 am. and 2 P.m.
of that day in the presence of
a large crowd of people, did

offer The land in said ^{and} mentioned
for sale, on the terms provided
in said decree, at public outcry
and to the highest and best bidder,
and after saying said sale for
a good while, the following
was knocked down to J. M.
Parsons who was the highest
and best bidder, the tract
commonly called the "Hirani"
bottom, and being the land
which was conveyed by deed
bearing date on the 15th day
of December, 1891 by John S.
and Amanda J. Ely to said
Sarah S. Ely and recorded in
D.B. 28 p. 574, and also the
tract of land owned by said
Joseph M. Ely in his lifetime,
and being the same land de-
vised to him by his father and
shown and set out in a plat
of partition between himself
and his brothers and shown
on said plat as lot No. 3, and
which is recorded in D.B. No.
10 page ; said Hirani bottom
was knocked down to said J. M.
Parsons at the price of \$25.24
and the other for \$2444.76, both
of which ~~said~~ seems said Parsons
paid down to said commissioners.

next your commissioners at the same time & place offered in the same way the tract of land which by deed dated Oct. 18th 1868, was by G. M. Hughes wife conveyed to said Joseph M. and Sarah S. Ely jointly, and the same was knocked down to Amanda J. Hughes who was the highest and best bidder, for the sum of \$210⁰⁰ which sum said Amanda J. paid down to your commissioners.

Next your commissioners at the same time and place, offered in the same way and on the same terms the residue of said Joseph M. Ely's land commonly called his home place and after considerable and spirited bidding the same exclusive of the R. R. right of way was knocked down to A. Johnson who was the best and highest bidder at the price of \$3675⁰⁰. Said Johnson has paid down to your commissioners \$147⁰⁰, and executed his ~~two~~ two notes, for \$1764⁰⁰ each bearing interest from date of sale and payable in one and two years time respectively & with H. L. Johnson

as his surety.

We beg to say that all this land has sold higher than the expectations of the most sanguine, and we think and advise a confirmation of each of said sales to said parties, and we respectfully ask your honor to direct us to properly pay out this fund now in our hands which amount to \$3627⁰⁰.

Your Commissioners will further show unto your honor that they believe they have seen and assigned said two notes of said Johnson's for par or at least at not more than 2% discount. On account of the number of persons interested in this fund and the account of taxes that will have to be paid on the same if they are held until maturity, your Commrs. recommend that by a proper order they be allowed to negotiate said notes at not more than 2% discount, and thus be able to disburse the entire funds at once of the sales of said lands.

Each of said sales to said parties were made by the boundary and at the risk of the purchasers.

as to the acreage of each tract
and sale. It is also sold subject
to the rights of the L. & N. R. R.
Co. in said lands.

If the sales to said F. M. Parsons
and Amanda J. Hughes be confirmed
by your Honor, and as before
stated they paid down, they are
entitled to a deed conveying their
title thereto, and as there are so
many persons interested, a deed
for such persons to personally
convey would be impracticable, and so
they recommend that a Court be
specially appointed for that purpose.

Statement of Receipts to date

(1)	From F. M. Parsons	\$3270. ⁰⁰
(2)	" Amanda J. Hughes	210.00
(3)	" A. Johnson	147.00

Total which we have on hand \$3627.00
and which we have deposited in
the Huntington Gap Bank to our
credit as Court, in this cause.

All which we respectfully
submit this the 1st day of Feb. 1901

E. H. Huntington

J. C. Noel

} Special
Clerks

J. J. & Mary P. Ely

Report of
vol } Sales

J. M. Linscott & Co

Filed Feb'y the 4th 1901

A. B. Munsey Clerk

John Z. & Mary P. Ely

vs.

J. M. Smyth et al

~~the~~ to the Hon. Wm. H. Sherman Judge
of the Circuit Court for the Co.

Your undersigned Counsel, beg
leave to report that on March
5th 1901 in said cause they
were appointed special Commrs. to
make Amanda J. Hughes and
J. M. Parsons deeds to the
lands which each severally
brought in the above styled
cause, that they have made
each of said parties a deed to
their respective purchases as
shown in our report of sales
filed in this cause on the
4th day of Feb. 1901.

All which is respectfully
submitted. This March 12th 1901

E. H. Huntington and
John Noel

John Z. Murray & Co

vs Report of
Deeds to
Hughey & Barrow

J. M. Smyth & Co

Filed March 2/1901

A B Murray clk

Smyth & Ely adms.

vs.

E. J. Tunington et al

and

John Z. & Mary P. Ely

vs.

J. M. Smyth et al

In Chancery.

To the Hon. St. A. H. Sherridge of
the Circuit Court for Lincoln County.

Pursuant to the decrees
rendered in these causes at the
Nov. term 1900, March and June
terms 1901 of your Honor's Court,
we the undersigned special
commissioners have sold the
lands of the late Joseph N. and
Sarah S. Ely, and derived
from such sales in cash after
deducting 3% discount on the
A. Johnson notes the gross
sum of \$7049.16. After paying
the costs in the last styled cause,
commissioners of sale and retained
out of the same \$72.00 with which
to pay the taxes on the funds in
our hands for this year, we
have paid out the residue (and
95¢ over) to those entitled to the

same, as directed under the former orders entered in these causes. The manner and amounts of our distribution of said sum of \$7049.16, and the persons to whom we have paid the same will be seen from a complete statement of our receipts and disbursements, which we herewith file as a part of this report, and numbered from One to ~~four~~ ^{four} inclusive. Statement No. five shows that there is ~~yet~~ in our hands the sum of \$87.12, which should be paid out to the persons named in this statement and in proportion of the amounts set after each one's name. We would have had this sum paid out to the persons named in Statement No. five, but all, except one, according to our information are infants without guardians in this State, and this being the case we could not lawfully pay the same out. We desire to get

exonerated wholly on our bond
as commissioners, so we ask
your honor to appoint some
suitable person ^{receiver} ~~guardian~~ for
the said fund in our hands,
and allow us to pay the same
over to such ^{receiver} ~~guardian~~.

We take occasion to con-
gratulate ourselves upon the
fortunate luck we have had in
getting this money disbursed.
We worked in conjunction with
the administrators of this estate,
and after a deal of correspond-
ing, we found all the persons
interested. To share in this es-
tate there were 249 persons,
and all have been paid their
due share, except 27, whose
names are shown in statement
five, and to whom is going \$87.13

Pursuant to the decree of your
honor entered at the June term
1901, we paid to J. P. Ely out
of the share of Jackson Ely's
heir's part the sum of \$30⁰⁰; it
taking that sum to pay off J. P.
Ely's recoveries after the said

administrators had paid what was in their hands going to the heirs of Jackson Ely dec'd.

If your honor will appoint a receiver to receive the funds in your commission's hands, there is no need of retaining these causes longer on the docket, except for the purpose of having Mr. R. Johnson a deed made to the land which he purchased, where he has paid for the same. Your commission will suggest that a deed be made to him reserving a vendor's lien thereby in favor of the Powell Valley Bank and thereby get these causes off the docket.

All which they respectfully submit. This Oct 6th 1901.

E. W. Framington }
J. C. Noel } *Comrs*

John Z & Mary S. Ely, Pliffs

vs.

J. M. Smyth et als

In Chancery.

Land Sales of J. N. Ely

In afy with

E. W. Huntington and J. C. Noel Comrs.

Statement No. One.

Showing gross amount to which said Comrs. should be charged, on account of sales of lands and discomit thereon as per decree of March, 1901

1901				
Jan	30	By a/cf. from F. M. Parsons	3270	00
"	30	" " " A. Johnson	147	00
"	30	" " " Amanda Hughes	210	00
Mar	28	" " " net proceeds of A. John - some notes of \$3528 at 5% discomit	234	12 16
		Total Receipts	\$7049	16

Mar	14	By Commissions retained	152	10
"	12	" Costs pd. A. B. Murray clerk	31	95
	12	" " " A. W. Gaines, Order Pub.	24	30
	12	" " " H. J. Melham Sheriff	2	00
	12	" " " J. P. Ely Deputy "	44	00
	12	" amt. retained of pd. for taxes for 1901	72	00
	12	" " Need. for Hiram Bottom & Hughes tax	930	24
		Am't. over	\$12563	47 049 16

Amts. brot. over	1256 59	7049 16
By $\frac{2}{3}$ of \$5777.67	3857 78	
" $\frac{1}{3}$ of \$5777.67	1918 89	
" Amt. P. L. Pennington Bros.	15 00	
	<u>\$7049 26</u>	<u>7049 16</u>

Statement No. Two.

Showing the disbursement of \$930.24, the gross amount received for the ^{one-half of the} Hughes tract and the Strain Bottoms, among the heirs of Sarah S. Ely died. as per decree of Nov. 17th 1900.

		By amt. recd. for Strain Bottom & 1/2 Hughes	930 24
		To share of costs, p. d.	35 00
		" " of heirs for 1901	10 00
Mar	14	" Amt. p. d. C. A. Dawson, Per decree of	39 50
	14	" " " J. C. Moore March 1901	39 50
April	1	" " " America Graham 2/7	230 33
"	1	" " " Thomas P. Garrison 1/7	115 17
"	1	" " " Daniel G. Simpson	115 17
"	1	" " " Cynthia Myers 1/4 of 2/7	57 58
"	1	" " " Sarah E. Myers 1/4 of 2/7	57 58
"	1	" " " John H. Pennington 1/4 of 2/7	57 58
"	1	" " " Mary P. Ely 1/4 of 2/7	57 58
Mar. 30		" " " Peter Reason 1/7 of 1/7	16 45
Mar. 30		" " " Belle Reason 1/7 of 1/7	16 45
		Am'ts carried over	849 91 930 24

		Amts. brot. over	847	91	930	24
Mar. 30	To	amt. P. L. Fannie Reaser $\frac{1}{7}$ of $\frac{1}{7}$	16	45		
" 30	"	" " John Reaser $\frac{1}{7}$ of $\frac{1}{7}$	16	45		
" 30	"	" " Leas Reaser $\frac{1}{7}$ of $\frac{1}{7}$	16	45		
April	"	" " Minna S. Unsted $\frac{1}{7}$ of $\frac{1}{7}$	16	45		
"	"	" " Rebecca Reaser $\frac{1}{7}$ of $\frac{1}{7}$	16	45		
		Totals.	\$930	16	\$930	24

Statement No Three

Showing the distribution of
 \$1925-89 among the sisters and
 brother of Sarah S. Ely, and their
 descendants, under the will of
 Joseph N. Ely and the decree of
 Nov. 17th 1900.

1901		By $\frac{1}{3}$ net as per Stat. No. One			1925-89
April 1	To	amt. P. L. America Graham $\frac{1}{3}$	641	96	
" 1	"	" " " Daniel G. Simpson $\frac{1}{2}$ of $\frac{1}{3}$	320	98	
" 1	"	" " " Thomas P. Garrison $\frac{1}{2}$ of $\frac{1}{3}$	320	98	
" 1	"	" " " Cynthia Myers $\frac{1}{4}$ of $\frac{1}{3}$	160	49	
" 1	"	" " " Mary P. Ely $\frac{1}{4}$ of $\frac{1}{3}$	160	49	
" 1	"	" " " Sarah E. Myers $\frac{1}{4}$ of $\frac{1}{3}$	160	49	
" 1	"	" " " John H. Pennington $\frac{1}{4}$ of $\frac{1}{3}$	160	49	
		Totals	\$1925	88	\$1925 89

Statement No. Four.

Showing the distribution of \$3851.78 among the descendants of the ten brothers and sisters of Joseph N. Ely, as directed by the decree of the Court on Nov. 17th 1900, and his will; also name of each descendant, amount due each, date and amount paid each, and amount remaining unpaid, and to whom on the day of October, 1901

Date of
Payments
1901

Names of Descendants		Share of each	Paid to each	unpaid to each
1	Jane Smyth Sister, dead leaving Eight Children, to wit:			
4	1 J. Morison Smyth	48 14	48 15	
	2 Lavinia Trent	48 14	48 15	
	3 Elizabeth J. Pennington dead leaving three children			
4	1 Alpha B. Myers	16 05	16 05	
4	2 Florence P. Hawkins	16 05	16 05	
4	3 C. P. Pennington	16 04	16 05	
4	4 Wm. Smyth dead leaving Eleven Children, to wit:			
4	1 John M. Smyth	4 37	4 37	
	Carried over	\$148 79	148 82	

		Amts. brot. over		148	79	148	82		
4	8	2	Alexander Smyth	4	37	4	37		
4	8	3	Tennessee Smyth	4	37	4	37		
4	8	4	Savina f. Curry	4	37	4	37		
4	8	6	America Combs	4	37	4	37		
4	8	7	George B. Smyth	4	37	4	37		
4	8	8	James M. Smyth	4	37	4	37		
4	8	9	Jesse M. Smyth	4	37	4	37		
4	8	10	Amanda J. Shackelford	4	37	4	37		
		11	Nelma Lane, dead leaving four children, to-wit						
4	8	1	Alice May Lane	1	09	1	09		
		2	Henderson Lane	1	09			1	09
		3	Belle Lane	1	09			1	09
		4	Lora Lane	1	09			1	09
4	13	5	Edward Smyth dead leaving eight children, to-wit:						
		1	Rebecca J. Travis	6	01	6	01		
3	30	2	Jas. T. Smyth	6	01	6	01		
4	1	3	Merwin O. Bartlett	6	01	6	01		
4	13	4	Mrs. A. Smyth	6	01	6	01		
4	6	5	Martha Gillen	6	01	6	01		
4	6	6	Emily Lucas	6	01	6	01		
4	1	7	Mary F. Parsons	6	01	6	01		
4	13	8	Sarah Sharp	6	01	6	01		
			Amt. D. Amnd over	24	56	237	32	3	27

amts. Int. over

24856 23732 327

6 David Smyth dead leav-
ing 11 children, to-wit:

3 30

1 John M. Smyth Jr.

4 37 4 37

4 1

2 Jas. H. Smyth

4 37 4 37

4 2

3 Mary J. Parsons

4 37 4 37

4 2

4 David H. Smyth

4 37 4 37

4 8

5 Albert M. Smyth

4 37 4 37

5 30

6 Sarah M. Greenwood

4 37 4 37

4 23

7 Mauda H. Leary

4 37 4 37

4 23

8 Louis E. Olinger

4 37 4 37

3 30

9 Charles C. Smyth

4 37 4 37

4 12

10 Laura R. Parsons

4 37 4 37

11 Alice Turner dead leav-
ing two children, to-wit:

1 Luther Turner

2 18

2 18

2 Wm. E. Turner

2 18

2 18

7 James Smyth dead leaving
Four children, to-wit:

4 8

1 Wm. Smyth

12 04 12 04

4 8

2 Joseph L. Smyth

12 04 12 04

4 8

3 Sarah Cole

12 04 12 04

4 Amanda Howard, dead, leav-
ing 2 children, to-wit:

1 Howard

6 02

6 02

2 Howard

6 02

6 02

Carried over

33679 31714 1967

		Am'ts brot. over	356 79	317	14	19	67
		8 Rebecca Orr dead leaving Six children to wit:					
5	30	1 Sarah J. Parsons	8 01	8 02			
4	2	2 John A. Orr	8 01	8 02			
4	15	3 Emily Newnam	8 01	8 02			
3	30	4 Mrs. F. Orr	8 01	8 02			
4	8	5 Peter H. Orr	8 01	8 02			
4	1	6 Mary B. Pugh (Dallie)	8 01	8 02			
		2 Elizabeth Branson, sister, dead leaving nine children to wit:					
5	18	1 Joseph E. Branson	42 79	42 79			
5	18	2 Richard N. Branson	42 79	42 79			
5	18	3 S. S. Branson	42 79	42 79			
4	1	4 Sallie Parsons	42 79	42 79			
5		5 Lurisa Raleigh	42 79	42 79			
		6 Henry C. Branson	42 79	42 79			
		7 Nimrod Branson dead leaving six children to wit:					
4	15	1 Roland Branson, } Paid	7 12	7 12			
4	15	2 George Branson } to	7 12	7 12			
4	15	3 Josephus Branson } M. G.	7 12	7 12			
4	15	4 Bettie Buck } Ely	7 12	7 12			
4	15	5 Lydia Leonard } their	7 12	7 12			
4	15	6 Rachel Townley } Attorney	7 12	7 12			
		Carried over	684 31	664 72	19	67	

		Am'ts bro't. over	684	31	661	72	19	67
	8	Chandler Branson dead						
		leaving nine children, to-wit:						
5	20	1 Sarah Clark	4	75	5	53		
5	20	2 Eliot Holcomb	4	75	5	53		
5	20	3 Bettie Estep	4	75	5	53		
6	17	4 Nancy Nolan	4	75	4	75		
		5 Emma Branson	4	75			4	75
		6 Mabel Branson	4	75			4	75
6	22	7 Hezekiah B. Branson	4	75	4	75		
7	5	8 John D. Branson	4	75	4	75		
6	22	9 J. Lincoln Branson	4	75	4	75		
	9	Fannie Howard dead & leav.						
		ing ten children, to-wit:						
6	1	1 Park B. Howard	4	27	4	27		
6	1	2 Geo. C. Howard	4	27	4	27		
6	1	3 Sudia Blanton	4	27	4	27		
6	1	4 Louisa Saylor	4	27	4	27		
6	1	5 Lucilla Simpson	4	27	4	27		
6	22	6 Minerva Saylor	4	27	4	27		
6	28	7 Bettie Neely	4	27	4	27		
		8 H. R. Howard	4	27	4	27		
5	20	9 Joseph E. Howard	4	27	4	27		
	11	Sallie Coldiron, dead						
		Leaving 2 children, to-wit:						
		1 Naisie Coldiron	2	13			2	13
		2 George Coldiron	2	13			2	13
		Carried over	769	75	738	74	33	43

		amts. brot. over	769	75	738	74	33	43
		^{\$385.12}						
	3	Hiram Ely, a brother, dead leaving ten children, to-wit:						
4	1	1 Joseph Ely, (Porter)	38	57	38	57		
3	30	2 George W. Ely	38	57	38	57		
4	1	3 Rev. Hiram H. Ely	38	57	38	57		
8	19	4 John H. Ely	38	57	38	57		
		5 Rinda Smyth, dead leaving three children to-wit-						
3	30	1 James Smyth	12	83	12	83		
		2 Sarah Stewart dead leaving seven children, to-wit						
4	1	1 Floyd Stewart	1	83	1	83		
4	1	2 Jas. A. Stewart	1	83	1	83		
4	1	3 Simon Stewart	1	83	1	83		
4	1	4 Lily Stewart	1	83	1	83		
4	1	5 Emmet Stewart	1	83	1	83		
4	1	6 Ballard Stewart	1	83	1	83		
4	1	7 Laura Stewart	1	83	1	83		
		3 Emily Moore dead leaving three children to-wit:						
4	1	1 Maynard Moore	4	27	4	27		
4	1	2 Truman Moore	4	27	4	27		
4	1	3 Ernest Moore	4	27	4	27		
		6 Nimrod H. Ely dead leaving seven children, to-wit:						
4	1	1 J. P. Ely	5	50	5	50		
3	30	2 Chas H. Ely	5	50	5	50		
		carried over	973	24	942	23	34	43

		Amts. brot over		973	24	942	23	33	43
5	16	3	W. S. Ely	5	50	5	50		
5	16	11	Hiram Ely	5	50	5	50		
4	23	5	John B. Ely	5	50	5	50		
5	17	6	Amanda Ely	5	50	5	50		
		7	J. M. Ely dead leaving two children, to-wit:						
4	1	1	Leonard Ely	2	75	2	75		
4	6	2	Maud Ely, Sarah E. Parks, guardian	2	75	2	75		
		7	Mrs. H. Ely dead leaving six children, to-wit:						
4	1	1	Hiram Ely	6	41	6	41		
4	1	2	Sarah Ely } Martha J.	6	41	6	41		
4	1	3	Nora Ely } Ely their	6	41	6	41		
4	1	4	Crocket Ely } Guardian	6	41	6	41		
4	1	5	Laura Harbor dead leaving						
		6	two children to-wit						
4	1	1	Mrs. Harbor } Martha J.	3	20	3	20		
4	1	2	Chas. Harbor } Ely their	3	20	3	20		
		6	Elkanah Ely dead leaving Two children, to-wit:						
4	1	1	Vernon Ely } Martha J.	3	20	3	20		
4	1	2	Nora Ely } Guardian	3	20	3	20		
		8	Jackson Ely dead leaving Six children, to-wit						
6	11	1	Sarah Smyth	6	41	6	40		
6	11	2	Minerva Bowen	6	41	6	40		
			Carried over	1051	97	1020	97	33	43

		amts. brot. over	1051 97	1020 97	33 43
6	11	3 Lyde Turner	6 41	6 40	
6	11	4 George A. E. Ely	6 41	6 40	
6	11	5 Hiram Ely	6 41	6 40	
6	11	6 Jackson Ely	6 41	5 00	1 40

On the
last of
Sept. 1891
I gave
to
Lyde
Turner
\$100.00
for
her
share
of
the
Ely
estate
I also
gave
to
George
A. E. Ely
\$100.00
for
his
share
of
the
Ely
estate
I also
gave
to
Hiram
Ely
\$100.00
for
his
share
of
the
Ely
estate
I also
gave
to
Jackson
Ely
\$100.00
for
his
share
of
the
Ely
estate

9 Milton H. Ely dead leaving
Six children, to-wit:

4	1	1 Emmet Ely	6 41	6 41	
4	6	2 W. R. Ely	6 41	6 41	
4	1	3 Rosa Robbins	6 41	6 41	
4	1	4 Oeta Smyth	6 41	6 41	
4	1	5 Marion Ely	6 41	6 41	
4	1	6 Palestine Ely	6 41	6 41	

24th m.
Stewart their
Guardian

10 Isaac Ely dead leaving
Four children to-wit:

7	18	1 Joseph M. Ely	9 62	9 62	
7	18	2 Nannie J. Green	9 62	9 62	
		3 Rosie Ely	9 62		9 62
		4 Lorinda Evans dead			
		Leaving two children, to-wit:			
		1 W. C. Evans	4 81		4 81
		2 Cornelia F. Evans	4 81		4 81

Carried over

1154 33 1102 87 54 67

amts. brot. over

1154 55 1102 87 54 07

\$385.17

4 Rachel four dead leaving
five children to wit:

4	27	1	Sallie Turner	77	03	77	03
5	29	2	Fannie Lewis	77	03	77	03
5	20	3	Souamie Baywood	77	03	77	03

4 Emily Sargent dead leaving
7 children to wit:

4	8	1	Jane Farley	11	00	11	00
4	8	2	Louisa King	11	00	11	00
4	8	3	Rachel Lord	11	00	11	00
4	8	4	Emily Manspie	11	00	11	00
4	8	5	Bettie Leiden	11	00	11	00
4	8	6	Frank Sargent	11	00	11	00

7 Mary Chappell dead
leaving 8 children to wit:

		1	Littie Chappell	1	37		1	37	
7	31	2	Rachel Chappell	1	37	1	37		
7	30	3	Bettie Chappell	1	37	1	37		
		4	John Chappell	1	37			1	37
		5	Elk Chappell	1	37			1	37
		6	Allen Chappell	1	37			1	37
		7	Geo. W. Chappell	1	37			1	37
		8	Sophia Chappell	1	37			1	37

5 Mary Howard dead
leaving three children.

5	16	1	Adeline Howard	25	67	25	67
---	----	---	----------------	----	----	----	----

carried over

1488 31 1428 37 62 29

		Amos brot. over	1488	31	1428	37	62	29
5	16	2 Milton Howard	25	67	25	67		
		3 Emily Lewis dead leaving Two children to-wit:						
5	16	1 Milton Lewis	12	83	12	83		
5	29	2 Mary Howard	12	83	12	83		
5		^{\$385.17} Francis Bailey dead leaving Eight children, to-wit:						
4	23	1 Lucinda Parsons	48	14	48	14		
4	23	2 Rebecca Malony	48	14	48	14		
4	6	3 Henry C. Bailey	48	14	48	14		
4	23	4 C. A. Bailey	48	14	48	14		
4	6	5 John M. Bailey	48	14	48	14		
4	6	6 Sallie Cecil	48	14	48	14		
4	6	7 Jane Barker	48	14	48	14		
		8 Louisa Flanary dead leaving three children.						
4	6	1 Francis Maxwell	16	05	16	05		
4	6	2 Lillie Shuffelbarger	16	05	16	05		
6		3 P. C. Flanary	16	05	16	05		
6		^{\$385.17} Nimrod C. Ely, a brother, dead leaving 5 children, to-wit:						
4	8	1 Rebecca Weston	77	03	77	03		
4	8	2 Emily Munsey	77	03	77	03		
4	8	3 Eviline J. Fletcher	77	03	77	03		
4	8	4 Susan Z. Young	77	03	77	03		
		5 Elizabeth Howard, dead leaving four children, to-wit:						
		Carried over	2232	89	2172	95	62	29

		Aunts. brot over	\$2232 89	2172 95	62 29
4 8		1 Eva J. Skaggs	19 25	19 26	
4 1		2 Oeta E. Johnson	19 26	19 26	
4 8		3 J. M. Howard, J. R. G. Heath guards	19 26	19 26	
		4 Mary Gilly dead leaving six children to. wit:			
4 9		1 Emory Gilly	3 21	3 21	
4 1		2 Leonie E. Parks	3 21	3 21	
4 9		3 Erud B. Gilly	3 21	3 21	
4 23		4 Annis M. Sitten	3 21	3 21	
4 9		5 Tip Gilly } Wm. J. Gilly } their	3 21	3 21	
4 9		6 Gale Gilly } Guardian	3 21	3 21	
		\$385.17			
		7 Rebecca Reason dead leaving eight children, to. wit:			
4 24		1 W. S. Reason	48 14	48 15	
4 24		2 A. J. Reason	48 14	48 15	
4 24		3 P. C. Hallam Reason	48 14	48 15	
4 24		4 J. Green Reason	48 14	48 15	
4 8		5 Fannie E. Collier	48 14	48 15	
4 22		6 Amanda Clinger	48 14	48 15	
		7 John Reason dead leaving seven children to. wit:			
4 8		1 Minerva S. Mustard	6 87	6 88	
4 8		2 Rebecca J. Barron	6 87	6 88	
3 30		3 Peter Reason } W. S. Reason Jr.	6 87	6 88	
3 30		6 John Reason	6 87	6 88	
3 30		4 Fannie Reason } their	6 87	6 88	
3 30		7 Cass Reason	6 87	6 88	
3 30		5 Belle Reason } Guardian	6 87	6 88	
		Aunts Carried over	2646 86	2587 05	62 29

		ants. but over	2646 86	2587 05	6229
		8 Ona Hobbs. Cox dead leaving Eight children.			
4 26	1	A. F. Hobbs	6 01	6 01	
4 20	2	Peter R. Hobbs	6 01	6 01	
4 20	3	John B. Hobbs	6 01	6 01	
4 20	4	Rebecca Johnson	6 01	6 01	
4 20	5	Ambrose J. Cox	6 01	6 01	
4 20	6	Jasen Cox	6 01	6 01	
4 20	7	Joel S. Cox	6 01	6 01	
4 20	8	Sydia Lerow	6 01	6 01	
		8 Andrew J. Ry dead leaving Five children to wit			
4 3	1	Rebecca R. Cecil	77 03	77 03	
4 1	2	Amanda J. Hughes	77 03	77 03	
4 1	3	Sarah Myers	77 03	77 03	
4 1	4	John J. Ely	77 03	77 03	
4 1	5	Mary E. Cox	77 03	77 03	
		9 Polly Smyth dead, leav- ing Eight children, to wit			
4 11	1	Tobias P. Smyth	48 14	48 15	
4 15	2	Sarah E. Leavney	48 14	48 15	
4 9	3	Mary Carter	48 14	48 15	
	4	Rebecca Johnson dead leaving 11 children to wit			
4 27	1	Joseph H. Johnson	4 27	4 27	
4 27	2	John H. Johnson	4 27	4 27	
6 24	3	A. J. Johnson	4 27	4 27	
		Ants. Ants over	3237 62	3177 84	6229

		Ants brok. over	\$3	237	62	3177	84	62	29
3-16	4	Mary Robbins		4	37	4	37		
4-6	5	Sarah S. Robbins		4	37	4	37		
4-27	6	Emily Turner		4	37	4	27		
4-27	7	Vesta Beecher		4	37	4	37		
	8	Golo Bailey		4	37			4	37
	9	Eora Johnson		4	37			4	37
4-6	10	Nancy Stanley		4	37	4	37		
4-24	11	James Johnson dead leaving four children, to wit							
	1	Mollie Hughes		1	09	1	09		
	2	Fannie Johnson		1	09			1	09
	3	Rebecca Johnson		1	09			1	09
	4	Rosa Johnson		1	09			1	09
	5	Joseph Smyth dead leaving 8 children, to wit							
5-18	1	Sarah Mullins		6	01	6	01		
4-1	2	Tennessee Smyth		6	01	6	01		
4-23	3	Rebecca Olinger		6	01	6	01		
4-11	4	Emmit Smyth	Tennessee	6	01	6	01		
4-1	5	Fannie Smyth	Smyth	6	01	6	01		
4-1	6	Flora Smyth	their	6	01	6	01		
4-1	7	Joseph Smyth	Guard	6	01	6	01		
5-18	8	America Bailey		6	01	6	01		
	6	America does dead leaving one child, to wit							
4-22	1	Mary does		48	14	48	15		
		Carried over	\$3	368	79	3297	01	74	30

		Aunts. brok. over	\$3368	79	3297	01	74	30
		7 Wm. O. Smyth dead leaving Four children, to-wit:						
5	20	1 Jas. M. Smyth Elkhorn	12	03	12	04		
5	20	2 Leon Hymn Hymn	12	03	12	04		
5	20	3 Jackson E. Smyth their	12	03	12	04		
5	20	4 David Smyth Guard	12	03	12	04		
		8 Frances Parsons dead leaving three children, to-wit:						
4	13	1 Emma Shork	16	05	16	05		
4	16	2 Sherman Parsons, Jr	16	05	16	05		
4	16	3 George Parsons } Parsons Guardian	16	05	16	05		
		^{\$385.17}						
10		Barbary Parsons dead leav- ing six children, to-wit:						
7	10	1 Fannie E. Potts	64	19	64	19		
7	17	2 Elizabeth J. Rice	64	19	64	19		
7	13	3 David H. Parsons	64	19	64	19		
7	13	4 Cynthia R. Strode	64	19	64	19		
		5 Emily H. Jones dead leaving one child, to-wit:						
7	20	1 Katie Bowers	64	19	64	19		
		6 Susan C. Harris-Perry, dead leaving 3 children to-wit:						
7	12	1 John H. Harris	12	83	12	83		
7	16	2 Maude Gardner	12	83	12	83		
7	16	3 Bessie J. Perry	12	83	12	83		
7	16	4 Elsie Perry	12	83	12	83		
		5 Frank Perry	12	83			12	83
		Totals	\$3	857	16	3765	59	87 12

Statement no. Five

Showing the amount in said Pennington & Noels hands as court in said Cause, on the 4th day of October, 1901; and who is entitled to the same, the amount to which each person is entitled; and whether such person is a minor or adult, and residence where known

Name	Residence		Adult or Minor	Amount due Each	
	Post Office	State			
Anderson Lane		Ky	minor	1	09
Belle Lane		"	"	1	09
Lora Lane		"	"	1	09
Suther Turner	Pen. Gap	Va	"	2	18
Wm E. Turner	do	"	"	2	18
Howard		Ky	"	6	02
Howard		"	"	6	02
Emma Branson	Crane Nest	"	"	4	75
Mabelle Branson	do	"	"	4	75
Naisie Coldiron		"	"	2	13
George Coldiron		"	"	2	13
Jackson Ely	Soldier	"	"	1	40
Rosie Ely		"	"	9	62
W. C. Evans		"	"	4	81
Conelia F. Evans		"	"	4	81
Lutitia Chappell		"	Adult	1	37
				55	44

Amek Brack. over

					55	44
John Chappell	Chappell	Hy	Min	1	37	
Elk. Chappell	do	"	"	1	37	
Allen Chappell	"	"	"	1	37	
Geo. H. Chappell Jr	"	"	"	1	37	
Sophia Chappell	"	"	"	1	37	
Gola Bayley	Slump	7 ⁶ / ₁₁	"	4	37	
Leora Johnson	do	"	"	4	37	
Fannie Johnson	"	"	"	1	09	
Rebecca Johnson	"	"	"	1	09	
Rosa Johnson	"	"	"	1	09	
Frank Perry			"	12	83	
<i>Unpaid</i>					87	13

Statement No. Six.

A Recapitulation of the
entire account of said Pennington
& Noel Cause, &c

Total amt. which went into said Cause hands as per Stat. No. One				\$ 7049 16
Disbursed as follows:				
Costs. pd. Cause retained, & taxes retained per Stat. No. One	341	35		
Paid out. per Stat. No. 2	930	16		
Paid " per Stat. No. 3	1923	88		
Paid out per Stat. No. 4	3765	59		
Bal. in hands per Stat. No. 5	87	13		
	7050	11		
	\$ 7050 11		7049 16	

Discrepancies

By amt. pd. J. C. Noel receiver

95
87 13

1901

12-27

Smyth & Ely adms.

^{vs}
E. J. Pennington & Co.
and

J. Z. & Mary P. Ely

^{vs}
J. M. Smyth & Co.

Report of Receipts &
Disbursements by
Nail & Pennington
Carroll

Received from E. J.
~~Pennington~~ and filed
October 21st 1901

A. B. Munsey Clerk

Smyth & Ely adms. Compt.
 vs.
 E. J. Pennington et al Defts
 and
 John Z. Ely & wife Compt.
 vs.
 J. M. Smyth et al Defts.

These causes came
 on again this day to be heard
 upon the papers formerly
 read therein and the reports and
 statements filed therewith of Coun.
 E. W. Pennington filed herein on
 Oct. 21st 1901 of the account
 of said Smyth & Ely as adms.
 of Sarah S. Ely dec'd. and the
 report & statements therewith of
 the receipts and disbursements
 of Couns. E. W. Pennington
 and J. C. Noel filed herein
 on Oct. 21st 1901, and was
 argued by counsel.

On consideration of all
 which, and said two reports
 & statements being exhibited
 to, it is adjudged ordered
 & decreed that each of said
 reports & statements be and are
 hereby confirmed and approved

And it further appearing
from said report and State-
ments that there is yet re-
disbursed in the hands of
said Drumington & Keel the
sum of \$87.13 and in the hands
of said Snyth & Ely the sum
of \$74.89, and which sums
go to various persons in various
amounts, and who are mostly
infants without guardians,
it is adjudged, ordered and
decreed that John C. Keel
be and is hereby appointed
a receiver for said two funds
and amounts; but before en-
tering upon his duties as
such receiver, said Keel
will execute before the
clerk of this court a bond
in a penalty of \$300⁰⁰ Con-
ditioned to properly account
for all moneys that may
come into his hands as
such receiver and otherwise
to faithfully discharge his
duties as such receiver.

It is further adjudged

ordered and decreed that said
Smyth & Ely as admors. of
said Sarah S. Ely's estate, after
said J. C. Noel shall have
executed said bond, will pay
said \$74.89 to said Noel taking
his receipt for the same; and
said Pennington & Noel Comrs. &c.,
will likewise pay over to said
J. C. Noel said \$87.13 taking
his receipt for the same, which
when done shall for ever dis-
charge and release said Smyth
& Ely as said administrators
on their bond, and also shall
for ever release and discharge
said E. H. Pennington and
J. C. Noel on their bond as
Comrs. for the sale of the
lands mentioned & sold in
this cause.

It further appearing to the
Court from a writing filed
herein of the Lowell Valley
& Bank, which owns the Notes
given by N. L. Johnson for
the purchase price of the Home
tract of land of the late Joseph
N. & Sarah S. Ely; and that

there is yet due on the said
notes and purchase price of
said land the sum of \$1764⁰⁰
with interest from January 21st
~~1891~~ 1901, and due January 21st 1903

and that said Bank is willing
that a deed be now made to
said Johnson for her purchase
retaining therein a lien for the
~~unpaid~~ unpaid money: It is
therefore adjudged, ordered
and decreed that E. H. Pennington
herby

appointed a special commis-
sioner for the purpose will
make to said N. L. Johnson
a deed to the land purchased
in these causes by her with
covenants of Special warranty
retaining therein a lien upon
said land for said sum of
\$1764⁰⁰ with interest thereon from
Jan. 21st 1901

in favor of the said Powell
Valley Bank, which when paid
said Bank will release.

And said E. H. Pennington
will report

action to correct when said deed
is made; and until said
deed is made this cause is
passed.

It is further ordered that
the report & statements there-
with of E. Thompson, corner,
settling the administration
account of said Smyth &
Sly be transmitted by the
clerk of this court to the
clerk of the County Court who
will record the same in
the book kept by him for
the recordation of the settle-
ment of fiduciaries.

Ealy & Lucy Th

us } I am

E. J. Pennington & Co

Entered on City O.B.
No 7 Page 9 & 10

Enter this

Nov. 7 1901

HAW Sherm

1

John J. Ely and J. Morison Smyth Admors &c
In as/ with
The Estates of Sarah S. & Joseph N. Ely

Statement No. One
Showing from whom recd., the
amount thereof and date

1900

4	23	Cash gotten at Sarah S. Ely's house	90	48
4	25	John A. G. Hyatt check	500	00
4	25	Cash in Farmington Safe Bank	46	43
4	27	Collected from John M. Smyth for	15	92
4	28	Cash Recd. on 1 st sale bill	130	56
4	28	" " " J. H. Farmington's sale no	3	06
7		Collected from James Dorrer	30	57
7	30	" " J. K. P. Kelly	100	00
8	3	" " M. V. Barker	41	00
8	13	" " Wm. Snavely	140	00
8	14	" " J. P. & G. I. Shelburne	45	00
8	17	" " John D. Russell	51	61
9	19	" " J. M. & G. I. Shelburne	7	25
9	22	" " Wm. Snavely	103	08
9	27	" " G. I. Shelburne	35	00
	27	" " W. F. Gilly	93	20
	29	" " G. H. Myers	77	08
10	6	" " J. K. P. Kelly	109	95
	6	" " J. B. Wolf	258	32
	13	" " J. K. P. Barren	411	22
		Carried over	2289	74

		Amt. brot over	2289	74
10	26	Collected from C. A. Orr	75	00
	27	" " L. C. & G. V. Shelburne	634	80
	29	" " A. J. & J. S. Cox	53	00
	30	" " F. P. Beaupardner	220	47
11	1	" " W. T. Gilly	200	00
	3	" " W. L. Jussee	116	61
	5	" " F. G. Gary	62	13
	13	" " G. S. Shelburne	17	57
	13	" " H. T. Gilly	44	53
	22	" " 3 rd Sales Cash	83	48
12	1	" " M. K. Graham	82	50
	1	" " J. J. C. Flannery & Bro	698	53
	1	" " R. L. Smeas et al	527	50
	8	" " John H. Pennington	273	06
	8	" " L. P. Ely	9	70
	8	" " Cred B. Gilly	24	20
	5	" " H. A. Orr	100	00
	6	" " Sam. Cecil	26	50
	10	" " Jas. H. Wilson	32	31
	11	" " Jas. H. Graham	57	84
8	25	" " 2 nd Sale Bee Cash	7	50
12	12	" " J. E. Graham	902	65
	12	" " A. J. Litten	98	89
	12	" " E. K. Pennington	186	00
	20	" " S. E. Shelburne	105	63
	22	" " D. L. & G. C. Jussee	306	25
	24	" " Charles Garrison	20	12
			7356	48

		Am't bro't over	7356	48
12	29	Collected from S. H. Myers	62	65
	29	" " John B. Ely	25	00
	29	" " Rev. H. H. Ely	25	61
	29	" " James Parsons	18	24
	29	" " A. L. Friel	7	10
	29	" " W. F. Orr	6	68
1901	31	" " C. S. Orr	22	66
/	/	" " Jas. P. Ely	8	65
/	/	" " Joseph Ely (Porter)	30	62
/	/	" " do	10	00
/	/	" " T. P. Smyth	17	90
/	/	" " Tennessee Smyth	6	38
/	/	" " J. Z. Ely	44	55
/	/	" " H. Grant Ely	3	05
/	/	" " E. O. Johnson	7	05
/	/	" " G. H. Smith	10	00
/	/	" " C. B. Gilly	12	15
/	/	" " J. H. Johnson	4	00
/	/	" " J. M. Smyth	18	04
/	/	" " J. P. Hughes	36	37
/	/	" " Henry B. Graham	106	00
/	/	" " Fred Brooks	25	60
/	/	" " M. A. Litten	19	25
/	/	" " J. P. Kelly	18	75
/	/	" " R. F. Cahen	82	67
485	/	" " Cora E. Gish	194	57
5	/	" " A. M. Clinger	34	50
		Carried over	8114	46

		Auth. brok. over	8114	46
1	3	Collected from John G. Ely	104	56
	8	" " H. M. Stewart	23	16
	10	" " J. G. Reason	14	05
	10	" " Samuel Spill	106	00
	12	" " J. J. Carter	31	41
	12	" " Chas. Short	7	23
	12	" " Sarah & G. H. Myers	53	00
	13	" " St. P. Myers	4	74
	15	" " Geo. H. Zion	326	18
	19	" " V. R. Aichap	79	96
	19	" " J. Z. Ely	303	27
	19	" " J. H. & E. J. Skaggs	13	00
	21	" " R. H. Orr	80	00
	21	" " F. B. Jasse	5	90
	25	" " St. J. Russell et al	63	12
	26	" " John P. Myers	454	16
	26	" " P. G. Johnson	8	14
	28	" " J. Z. Ely	97	36
	30	" " James Smyth	11	65
	5	" " Mary E. Leoy	5	50
	3	" " Jas. H. Graham	76	50
2	1	" " M. V. Barker	137	30
	4	" " America L. Graham	224	00
	8	" " E. B. Litten	20	00
	9	" " J. K. Parsons	106	00
	9	" " Elk. Garrison	16	74
		Auth. carried over	10487	39

		Amt. brok. over	10487	39
2	9	Collected from Bailie & Feltner	10	75
	27	" " H. J. Gilly	17	05
2	12	" " C. L. Hamblen	38	28
4	1	" " H. B. Cox et al	64	41
4	1	" " C. B. Gilly et al	4	65
4	1	" " G. H. Myers & wife	28	75
4	6	" " S. J. Colden	12	50
4	6	" " Robt. H. Orr	6	00
4	8	" " A. P. Ely et al	24	75
4	1	" " C. L. Hamblen	100	00
	8	" " J. H. & E. J. Skaggs	23	07
	24	" " H. C. Parsons	42	00
5	1	" " E. R. Garrison	14	48
5	1	" " E. B. Litton	6	60
5	1	" " Interest on Loans	28	25
Total Amt. that went in Admrs hands			10909	21

Statement No. Two

Showing debts of decedent,
Sarah S. Ely, Expenses of ad-
ministration, burials, and Costs
deemed to be paid by adminis-
trators in the Chancery Cause of
Smyth & Ely administrators vs. E. J. Pen-
nington et al

1900

4	26	Pd. J. E. Hobbs, J. K. P. Kelly, N. P. M. Stewart & W. H. G. Burrow ^{appraisers}	7 00
	26	" J. R. Gibson & Sons burials	50
		" N. L. Johnson " Coffin &c	36 13
	27	" H. K. Hopkins for black notes	1 00
	27	" John St. Kelly for feeding stock	7 00
5	9	" Dr. A. J. Stewart Dr. bill	18 50
	9	" Geo. F. Clark " "	6 00
	9	" R. W. Ely a/x	2 00
	9	" A. J. Ely Clerk at sale	2 00
	9	" F. B. Lion do	3 00
	9	" H. J. Orr J. P. for swearing apprs.	50
	9	" John P. Hughes Crying sale	4 00
6	14	" Enos Spurr a/x	5 00
7	14	" C. B. Gilly for cutting oats	50
8	1	" Dr. H. G. Ely Dr. bill	3 00
9	13	" Costs In Re. Amelias vs. J. H. Pennington	13 50
11	26	" Sam. Joe & John Ely, gathering Corn	10 12
	26	" Taxes for 1900	131 98
12	8	" L. P. Ely D. Sheriff Costs	44 00

		Amt. brok. down	286	73
12	8	Ph. Pennington Bros. see decr nos. 17/1900	115	00
8	31	" E. R. Garrison Witness Claim		50
9	1	" John St. Kelly do		50
9	1	" John Hughes hauling wheat		50
12	29	" St. St. Ely witness Claim	1	00
	29	" H. K. Hopkins for printing bonds	4	50
	29	" A. B. Munnery Clerk	25	00
	29	" B. M. Morgan "	23	35
	29	" A. M. Gains Comr & Q. P.	74	80
	29	" H. J. Milhame Sheriff	2	00
1901	29	" J. B. Ely aff	1	00
1	1	" Mary P. Ely witness	1	00
1	12	" St. G. Ely's aff	3	00
	12	" E. F. Holdre aff		53
3	12	" H. A. Baker Justice	7	50
		" Other witness Claims	4	50
		" Taxes for 1901	46	00
5	28	" Pennington Bros aff	65	00
		Retained to have recorded this settlement		10 00
		Retained for E. H. Pennington for making this settlement		41 00
		Total	723	41

Statement No. Three

Apportionment of Costs
 &c., as per decree of Nov. 17th 1900.
 the Ely heirs and devisees
 paying .6534% of the same and
 the Huntington or Graham
 heirs paying .3466% of same.

Total Costs as per Statement No. Two	723	41
6534% for Ely Devisees	472	67
3466% for Graham " heirs	250	74
	723	41
	723	41

Statement No. Four

Showing apportionment of
 the entire funds which went
 into hands of said Adms. as
 per decree of Nov. 17th 1900

Total amt. Recd. by adms per. No. 1	10909	21
Less interest accumulated on de- cuments relative to April 1 st 1900 & not counted in inventory of Nov. 17 th 1900		\$52.00
To Be divided	10457	21
6534% for Ely devisees	6832	74
3466% " Sarah S. Ely's heirs	3624	47
	10457	21
	10457	21

Statement No. Five

Showing the division of the Estate of Joseph N. Ely, after that of Sarah S. Ely's is eliminated from the whole, as per his will and the decree of the court of Nov. 17th 1900.

J. N. Ely's estate as per Stat. No. 4	6832	74	
Less Costs &c as per Stat. No. 3	472	67	
Net for Division	6360	07	
$\frac{2}{3}$ for his brothers & Sisters	4240	05	
$\frac{1}{3}$ " his wife 80	2120	02	
	6360	07	6360 07

Statement No. Six

Showing what sum the Heirs of Sarah S. Ely will get Net.

Her <u>Heirs</u> Share per Stat. No. 4	3624	47	
" " " " " " 4	452	00	
" " " Total gross	4076	47	
Less Costs &c per Stat. No. 3	250	74	
" Fee for Noel & Duncan	300	00	
" 6% Com on \$3825.73	229	54	780 28
Net for Distribution			\$3296 19
America Graham $\frac{1}{7}$	94	1	27
Thomas P. Garrison $\frac{1}{7}$	470	88	
Daniel G. Simpson $\frac{1}{7}$	470	88	
Carried over	1883	53	3296 19

Amts. brok. over	1883	53	3296	19
Mary P. Ely $\frac{1}{4}$ of $\frac{2}{7}$	235	44		
John H. Huntington $\frac{1}{4}$ of $\frac{2}{7}$	235	45		
Cynthia Myers $\frac{1}{4}$ of $\frac{2}{7}$	235	45		
Sarah Myers $\frac{1}{4}$ of $\frac{2}{7}$	235	44		
M. S. Unsted $\frac{1}{7}$ of $\frac{1}{7}$	67	26		
Rebecca Barron $\frac{1}{7}$ of $\frac{1}{7}$	67	27		
John Reaser $\frac{1}{7}$ of $\frac{1}{7}$	67	27		
Peter Reaser $\frac{1}{7}$ of $\frac{1}{7}$	67	27		
Bill Reaser $\frac{1}{7}$ of $\frac{1}{7}$	67	27		
Fannie Reaser $\frac{1}{7}$ of $\frac{1}{7}$	67	27		
Case Reaser $\frac{1}{7}$ of $\frac{1}{7}$	67	27		
	3296	19	3296	19

Statement No. Seven

Showing what the Sisters and brother of Sarah S. Ely, and their descendants will get under the will of Joseph N. Ely Nov. as per decree of Nov. 17th 1900.

Gross amt. per State No. 5.			2128	02
Less 6% com	127	20		
" 4% com on \$250.74	15	04	142	24
			1977	78
America Grubbs $\frac{1}{3}$ of same	659	26		
Thomas P. Garrison $\frac{1}{2}$ of $\frac{1}{3}$	329	63		
Harriet G. Simpson $\frac{1}{2}$ of $\frac{1}{3}$	329	63		
	1318	52	1977	78

Amts. brot over	1318	52	1977	78
Mary P. Ely $\frac{1}{4}$ of $\frac{1}{3}$	164	82		
John St. Pennington $\frac{1}{4}$ of $\frac{1}{3}$	164	81		
Cynthia Myers $\frac{1}{4}$ of $\frac{1}{3}$	164	82		
Sarah Myers $\frac{1}{4}$ of $\frac{1}{3}$	164	81		
	1977	78	1977	78

Statement No. Eight

Showing amt. due the Sisters and
brothers of Sarah S. Ely and their
deendants both as heirs of said
Sarah S. Ely and as devisees of
of Joseph N. Ely, and date and
amount of payments made
by said Lurynth & Ely as admin.
of the estate of said Sarah S. Ely

		Due America Graham per Stat. 6		941	77
1900		" do per Stat. No. 7		657	26
Dec 1901	12	Pd. Her	916	39	
Jan	5	" "	433	61	
April	1	" "	257	36	
		Overpaid Her			33
			1601	36	1601 36
		Due Thomas P. Garrison Stat. 6.		470	88
1901		" do per Stat. No. 7		329	63
June	26	" H. B. Graham his atty. in fact	675	00	
April	1	" do do	125	68	
			800	68	800 57

Amts. brok. over	1883	53	3296	19
Mary P. Ely $\frac{1}{4}$ of $\frac{2}{7}$	235	44		
John H. Furrington $\frac{1}{4}$ of $\frac{2}{7}$	235	45		
Cynthia Myers $\frac{1}{4}$ of $\frac{2}{7}$	235	45		
Sarah Myers $\frac{1}{4}$ of $\frac{2}{7}$	235	44		
M. S. Unsted $\frac{1}{7}$ of $\frac{1}{7}$	67	26		
Rebecca Barron $\frac{1}{7}$ of $\frac{1}{7}$	67	27		
John Reason $\frac{1}{7}$ of $\frac{1}{7}$	67	27		
Peter Reason $\frac{1}{7}$ of $\frac{1}{7}$	67	27		
Ben Reason $\frac{1}{7}$ of $\frac{1}{7}$	67	27		
Fannie Reason $\frac{1}{7}$ of $\frac{1}{7}$	67	27		
Geas Reason $\frac{1}{7}$ of $\frac{1}{7}$	67	27		
	3296	19	3296	19

Statement No. Seven

Showing what the Sisters and brother of Sarah S. Ely, and their descendants will get under the will of Joseph N. Ely Nov. as per decree of Nov. 17th 1900.

Gross amt. per State No. 5.			2128	02
Less 6% com	127	20		
" 4% com on \$250.74	15	04	142	24
			1977	78
America Grubbs $\frac{1}{3}$ of same	659	26		
Thomas P. Garrison $\frac{1}{2}$ of $\frac{1}{3}$	329	63		
Harold G. Simpson $\frac{1}{2}$ of $\frac{1}{3}$	329	63		
	1318	52	1977	78

	Due Cynthia Myers Stat-No. 6			235	44
1901	" " " " 7			164	82
Jan. 1	By amt. pd. her	330	00		
March 30	" " " "	20	34		
	To amt. overpaid her				08
		400	34	400	34

	Minerva S. Amplett, Stat-No. 6			67	26
1901	" " " " 16			6	00
Jan. 12	By amt. pd. her	55	00		
April 8	" " " "	18	28		
		73	28	73	26

	Rebecca J. Reason Stat-No. 6			67	26
1901	" " " " 16			6	00
Jan. 12	By amt. pd. her	55	00		
April 8	" " " "	18	28		
		73	28	73	26

	Rebecca J. Reason Stat-No. 6			67	26
1901	" " " " 16			6	00
March 30	By amt. pd. H.S. Reason guard.	73	28		
		73	28	73	26

	Due Fannie Reason, Stat-No. 6			67	26
	" " " " No. 16			6	00
1901	Mar. 30 By amt. pd. H.S. Reason guard.	73	28		
		73	28	73	26

	June Belle River Stat. No. 6	67 26	
	" " " " " 16	6 00	
1901	June 30, By amt. pd. D.S. Reason guard	73 28	
		73 28	73 26
	Due John Reason, Stat. No 6	67 26	
	" " " " " 16	6 00	
1901	March 30, By amt. pd. D.S. Reason guard	73 28	
		73 28	73 26
	Due Cass Reason Stat. No. 6	67 26	
	" " " " " No. 16	6 00	
1901	March, 30, By amt. pd. D.S. Reason, guard	73 28	
		73 28	73 26

Statement No. 9.

Showing the net amount due the Brothers and Sisters of Joseph N. Ely, ^{and their descendants} under his will as construed by the Court. See decree of Nov. 17th 1900.

Gross amt. due them for Stat. No. 6	4240 05
Deduct Equip. for bk. and train	250 00
" " " " Remington gun	250 00
Carried over	500 00 4240 05

Aunts bank. over		500	00	4240	05
Deduct 8% Com. on \$4240.05		339	20		
" 8% " " \$472.67 Stat 5		37	81	877	01
Net for Distribution as follows				\$3363	04
1	Jane Smyth's Heirs	✓	336	30	
2	Elizabeth Brauns	"	✓	336	30
3	Hiram Ely's	"	✓	336	30
4	Rachel Jones	"	✓	336	30
5	Frances Bailey's	"	✓	336	30
6	Nimrod C. Ely's	"	✓	336	30
7	Rebecca Benson's	"	✓	336	30
8	Andrew J. Ely's	"	✓	336	30
9	Polly Smyth's	"	✓	336	30
10	Barbara Parsons	"	✓	336	29
			3363	30	3363 04

Statement No. 2.

Showing the disbursements of
 Jane Smyth the amount
 each will get, and date of
 payment. She died leaving
 Eight Children.

Aunts bank
 paid.

Name of Accendant	Amount due each	Am. T. paid each	Date of Payment
E. Marion Smyth	42 02	42 04	7-1 1901
Sallie Trent	42 03	42 04	12-29 1900
			4-8 1901

Statement No. Two.

Showing the distribution of \$336.30, the share of Jane Smyth, a sister of Joseph H. Ely; among her descendants; she being dead leaving Eight Children; the amt. due each. date of payment, and amount repaid and to whom;

Date of payments 1901			Names of Jane Smyth's Descendants	Share and Amt. Due Each	Amt. Paid Each	Unpaid
1	1					
4	1	1	J. Monroe Smyth	42 03	42 04	
1800						
1/2/91	28	2	Sallie Trent	42 03	42 02	
		3	Elizabeth J. Pennington, dead leaving 3 children to wit:			
1901						
4	6		(1) Alpha B. Myers	14 01	14 01	
4	6		(2) Florence P. Hawkins	14 01	14 01	
			(3) B. P. Pennington	14 01	14 02	
		4	Anna Smyth dead leaving Eleven children, to wit:			
4	8		(1) John M. Smyth	3 82	3 82	
4	8		(2) Alexander Smyth	3 82	3 82	
4	8		(3) Tennessee Smyth	3 82	3 82	
4	8		(4) Lavinia J. Curry	3 82	3 82	
4	8		(5) America Leomba	3 82	3 82	
4	8		(7) George B. Smyth	3 82	3 82	
			Amts. Carried over	152 84	152 86	

1901

		amts. brot. over	152 84	152 86	
4	8	(8) James M. Snyth	3 82	3 82	
4	8	(9) Jesse M. Snyth	3 82	3 82	
4	8	(10) Amanda J. Shackelford	3 82	3 82	
		(11) Helina Lane, dead leaving four children, to-wit:			
4	8	(1) Alice May Lane	95	95	
		(2) Henderson Lane	95		95
		(3) Belle Lane	95		95
		(4) Cora Lane	95		95
5		Edward Snyth dead leav- ing 8 children, to-wit			
3	4	1 Rebecca J. Travis	5 25	5 25	
4	15	2 Jas. T. Snyth	5 25	5 25	
1	5	3 Nannie O. Bartlett	5 25	5 25	
3	20	4 Mrs. A. Snyth	5 25	5 25	
4	1	5 Martha Guillen	5 25	5 25	
3	4	6 Emily Lucas	5 25	5 25	
4	15	7 Mary F. Parsons	5 25	5 25	
1	9	8 Sarah Sharp	5 25	5 25	
4	6	6 David Snyth, died leaving 11 children to-wit			
4	6	1 John M. Snyth Jr	3 82	3 82	
4	1	2 James S. Snyth	3 82	3 82	
4	2	3 Mary J. Parsons	3 82	3 82	
1	10	4 David H. Snyth	3 82	3 82	
4	2	5 Elbert M. Snyth	3 82	3 82	
1900	12	6 Sarah Greenwood	3 82	3 82	
1901	29				
1901	8				
1901	5				
5	30	amts. Carried over	233.02	230 19	285

5-
1 10
19 4 2.3
12 29
190 20
4 13

amts. brot. over

233 02 230 19 2 85

7 Manda K. Cary

3 82 3 82

8 Sonie E. Olinger

3 82 3 82

9 Charles C. Snyth

3 82 3 82

10 Laura R. Parsons

3 82 3 82

11 Alice Turner dead &

leaving 2 Children, to wit:

1 Luther Turner

1 91

1 91

2 Mrs. E. Turner

1 91

1 91

7 James Snyth dead leaving
4 Children, to wit:

1 Mrs. Snyth

10 51 10 51

2 Joseph L. Snyth

10 51 10 51

3 Sarah Cole

10 51 10 51

4 Amanda Howard dead
leaving Children to wit:

1 Howard

5 25

5 25

2 Howard

5 25

5 25

8 Rebecca Orr dead leaving
Six Children to wit:

1 Sarah J. Parsons

7 00 7 00

2 John A. Orr

7 00 7 00

3 Emily Newman

7 00 7 00

4 Mrs. J. Orr

7 00 7 00

5 Peter H. Orr

7 00 7 00

6 Nellie Pugh

7 00 7 00

Totals

336 15 319 00 17 17

5 20

4 2

4 15

1 2 29

2 20

1 15

4 8

1 5

4 1

Statement No. Twelve.

Showing the distribution of \$336.30, the share of Hiram Ely, a brother and devisee of Joseph N. Ely, among his descendants, he being dead, leaving ten children; the amount due each, date of payments; and the amount if any remaining unpaid and to whom on

Dates of Payments 1901		No	Names of Descendants of said Hiram Ely	Share of Each	Paid to Each	Unpaid to Each
12	29	1	Joseph (Porter) Ely	33 63	33 63	
4	1					
12	29	2	George H. Ely	33 63	33 63	
3	30					
11	1	3	Hiram H. Ely	33 63	33 63	
8	19					
24	1	4	John H. Ely	33 63	33 63	
		5	Rinda Smyth dead leaving three children, to wit:			
1	30		1 James Smyth	11 20	11 20	
3	30		2 Sarah Stewart dead leaving 7 children to wit			
4	1	1	Floyd Stewart	1 60	1 60	
4	1	2	Jas. A. Stewart	1 60	1 60	
4	1	3	Simon Stewart	1 60	1 60	
4	1	4	Lily Stewart	1 60	1 60	
4	1	5	Emmett Stewart	1 60	1 60	
4	1	6	Ballard Stewart	1 60	1 60	
4	1	7	Laura Stewart	1 60	1 60	
			Carried over			
				\$156 92	\$156 92	

Mrs. M. Stewart Guardian

Ants brot over

156 92 156 92

3 Emily Moon dead leaving
3 Children to wit

+

4 1

1 Maynard Moore } Tennessee

3 75 3 75

4 1

2 Truman Moore } Smyth this

3 75 3 75

4 1

3 Ernest Moore } Guardian

3 75 3 75

Nimrod H. Ely dead leaving

6 7 Children to wit:

4 1

1 J. F. Ely

4 80 4 80

3 30

2 Chas. H. Ely

4 80 4 80

5 16

3 H. S. Ely

4 80 4 80

4 23

4 John B. Ely

4 80 4 80

5 17

5 Hiram Ely

4 80 4 80

5 17

6 Amanda Ely

4 80 4 80

7 J. M. Ely dead leaving
two Children to wit

4 1

1 Thomas Ely

2 40 2 40

4 6

2 Maud Ely, Sarah E. Parks guard.

2 40 2 40

7 Mrs. H. Ely dead leaving six
Children to wit

4 1

1 Sarah Ely } Martha J. Ely

5 60 5 60

4 1

2 Nora Ely } their

5 60 5 60

4 1

3 Crockett Ely } Guardians

5 60 5 60

4 1

4 Hiram Ely

5 60 5 60

5 Laura Harbor dead leaving
two Children to wit:

4 1

1 Mrs Harbor } Martha J. Ely this

2 80 2 80

4 1

2 Charles Harbor } Guardian

2 80 2 80

		amts. brot. over	229 71	229 71	
		6 Elkanah Ely dead leaving two Children to wit:			
4	1	1 Vernon Ely	2 80	2 80	
4	1	2 Sora Ely	2 80	2 80	
		Martha J. Ely Guardian			
		8 Jackson Ely dead leaving Six Children to wit:			
6	11	1 Sarah Smyth	5 60	5 60	
6	11	2 Minerva Brown	5 60	5 60	
6	11	3 Lyde Turner	5 60	5 60	
6	11	4 George Ann Ely	5 60	5 60	
6	11	5 Hiram Ely	5 60	5 60	
6	11	6 Jackson Ely	5 60	5 60	
		David to J. Ely. Sec. done of Church, died June 3/1901			
		9 Milton St. Ely dead leaving Six Children to wit:			
1	5	1 Emmet Ely	5 60	5 60	
4	6	2 S. R. Ely	5 60	5 60	
4	1	3 Rosa Robbins	5 60	5 60	
4	1	4 Oeta Smyth	5 60	5 60	
4	1	5 Marion Ely	5 60	5 60	
4	1	6 Palestine Ely	5 60	5 60	
		W. M. Stewart their guardian			
		10 Isaac Ely dead leaving Four Children to wit:			
7	18	1 Joseph M. Ely	8 40	8 40	
7	18	2 Nannie Green	8 40	8 40	
		3 Rosie Ely	8 40		8 40
		4 Louisa Evans dead leaving two Children Carried over			
			327 71	319 31	8 40

Amts brot. over		327	71	319	31	8	40
1	W. C. Evans	4	20			4	20
2	Cornelia F. Evans	4	20			4	20
Totals		336	11	319	31	16	80

Statement No Thirteen

Showing the distribution of \$336.80 the share of Rachel Jones, a sister and devisee of Joseph N. Ely, among her descendants; she being dead, but leaving five children; the amount due to each, when paid; and the amount, if any remaining unpaid on the

1901.

date of pay- ment		No	Names of Descendants of said Rachel Jones	Share to Each	Paid to Each	unpaid to Each
mo.	day					
4	27	1	Sallie Turner	67 26	67 26	
5	29	2	Fannie Lewis	67 26	67 26	
5	20	3	Souanna Caywood	67 26	67 26	
		4	Emily Sergeant dead			
			leaving 7 children, to-wit:			
4	8	1	Jane Farley	9 61	9 61	
Amts. carried over				211	39	211 39

		ants. brot. over	211	39	211	39	
4	8	2 Louisa King	9	61	9	61	
4	8	3 Rachel Ross	9	61	9	61	
4	8	4 Emily Maupin	9	61	9	61	
4	8	5 Bettie Crider	9	61	9	61	
4	8	6 Grant Sergeant	9	61	9	61	
		7 Mary Chappell, dead leaving 8 Children to wit:					
		1 Leticia Chappell	1	20			1 20
7	31	2 Rachel Chappell	1	20	1	20	
7	30	3 Bettie Chappell	1	20	1	20	
		4 John Chappell	1	20			1 20
		5 Eliza Chappell	1	20			1 20
		6 Allen Chappell	1	20			1 20
		7 Washington Chappell	1	20			1 20
		8 Sophia Chappell	1	20			1 20
		5 Mary Howard, dead leaving three children to wit:					
2	21	1 Adeline Howard	2	42	2	42	
5	16	2 Milton Howard	2	42	2	42	
2	1	3 Emily Lewis, dead, leaving two children to wit					
5	16	1 Milton Lewis	1	20	1	20	
3	29	2 Mary Thompson	1	20	1	20	
		Totals	33	608	329	08	7 20

Statement No. Fourteen

Showing the distribution of \$336.30, the share of Frances Bailey, a sister and devisee of Joseph N. Ely, among her descendants; she being dead, but leaving Eight children, the amount due each and when paid; and the person and amount remaining unpaid on the day of 1901.

Date of Payments		No	Names of said Frances Bailey's Descendants	Share of Each	Paid to Each	Unpaid to Each
1901						
4	23	1	Lucinda Parsons	42 03	42 04	
4	23	2	Rebecca Maloney	42 03	42 04	
1	10					
4	6	3	H. C. Bailey	42 03	42 04	
1	10					
4	23	4	Chas. S. Bailey	42 03	42 04	
1	10					
4	23	5	John M. Bailey	42 03	42 04	
1	10					
4	6	6	Sallie Cecil	42 03	42 04	
1	10					
4	6	7	Jane Barker	42 03	42 04	
1	10					
4	6	8	Louisa Flannery dead, leaving three children to wit	14 01	14 01	
1	10					
4	6	1	Frances Maxwell	14 01	14 01	
1	10					
4	6	2	Lettie Shuffelbarger	14 01	14 01	
4	6					
6		3	P. C. Flannery	14 01	14 01	
			Totals	\$336 21	336 31	

Statement No. Fifteen.

Showing the distribution of \$336.30 among the descendants of Nimrod C. Ely, a brother and devisee of J. N. Ely; said Nimrod being dead, leaving Five Children, the amount due each, and when paid; and the person and amount remaining unpaid on the day of 1901.

ratio of Payments 1901		No	Names of said Nimrod C. Elys de- scendants	Share of Each	Paid to Each	Unpaid to Each.
4	8	1	Rebecca Weston	67 26	67 26	
1	"					
4	8	2	Emily Minsey	67 26	67 26	
1	"					
4	8	3	Eviline J. Fletcher	67 26	67 26	
4	8	4	Susan Young	67 26	67 26	
		5	Elizabeth Howard, dead leaving 4 Children, to-wit:			
1	19					
4	8	1	Eva J. Skaggs	16 81	16 81	
1	19					
4	1	2	Oeta E. Johnson	16 81	16 81	
4	8	3	John M. Howard, J. A. J. Howard, Jr.	16 81	16 81	
		4	Mary Gilly dead leaving Six Children to-wit:			
4	9	1	Emory Gilly	2 80	2 81	
4	1	2	Leornie E. Parks	2 80	2 81	
4	9	3	Leuch B. Gilly	2 80	2 81	
4	22	4	Annie M. Sisson	2 80	2 81	
4	9	5	Tip Gilly } H. J. Gilly } their	2 80	2 81	
4	9	6	Gale Gilly } guardian	2 80	2 81	
Totals				\$336 27	336 35	

Statement No. Sixteen.

Showing the distribution of \$336.30
the share of Rebecca Reason, a sister
and dwicee of Joseph N. Ely, among her
descendants; she being dead, leaving
Eight Children, the amount due
each, and when paid, and the persons
to whom and amount remaining
unpaid, on the day of 1901.

Dates of Payments	No	Names of Rebecca Reason's Descendants	Share of Each	Paid to Each	Unpaid to Each
1901					
1 9	1	D. S. Reason	42 03	42 04	
4 24	2	A. J. Reason	42 03	42 04	
1 9	3	P. C. Wallace Reason	42 03	42 04	
4 24	4	J. Green Reason	42 03	42 04	
4 8	5	Fannie E. Collins	42 03	42 04	
1 10	6	Amanda Clinger	42 03	42 04	
4 23	7	John Reason dead, leaving 7 Children, to-wit:			
4 8	1	Minerva S. Unsted	6 00	6 00	
4 8	2	Rebecca J. Barron	6 00	6 00	
3 30	3	Peter Reason	6 00	6 00	
3 30	4	Fannie Reason	6 00	6 00	
3 30	5	Belle Reason	6 00	6 00	
3 30	6	John Reason	6 00	6 00	
3 30	7	Cass Reason	6 00	6 00	
		Totals carried over	294 18	294 24	

		amt brot. over	294 18	294 24
8		Anna Hobbs dead leaving Eight Children to wit:		
4 26	1	A. F. Hobbs	5 25	5 25
4 20	2	Peter R. Hobbs	5 25	5 25
4 20	3	John B. Hobbs	5 25	5 25
4 20	4	Rebecca Johnson	5 25	5 25
4 20	5	Ambros. J. Cox	5 25	5 25
4 20	6	Jason Cox	5 25	5 25
4 20	7	Joel S. Cox	5 25	5 25
4 20	8	Sydia Crow	5 25	5 25
		Totals	336 18	336 24

Statement No. Seventeen.

Showing the distribution of \$336.30,
the share of Andrew J. Ely, a brother
and devisee of Joseph N. Ely, among
said Andrew's descendants; he being ^{dead}
leaving five children, the share
of each and when paid, amt. unpaid.

Dates of Payments		Names of Andrew J. Ely's Descendants		Share of Each	Paid to Each	unpaid to Each.
1901						
1	9	1	Rebecca R. Leecil	67 26	67 26	
4	3					
1	5	2	Amanda J. Hughes	67 26	67 26	
4	1					
1	12	3	Sarah Myers	67 26	67 26	
4	1					
1	5	4	John J. Ely	67 26	67 26	
4	1					
1	3	5	Mary E. Cox	67 26	67 26	
4	1					
			Totals	336 30	336 30	

Statement No. Eighteen.

Showing the distribution of ~~\$~~336.30, the share of Polly Smyth, a sister and devisee of Joseph N. Ely, among her descendants; she being dead leaving Eight children; the share of each, date and amount of payments; and the person to whom and amount remaining unpaid on the

Dates of Payments		No	Names of Polly Smyth's Descendants	Share of Each	Paid to Each	1901. unpaid to Each
4	11	1	Tobias T. Smyth	42 03	42 04	
4	15	2	Sarah E. Leomey	42 03	42 04	
1	5					
4	9	3	Mary Carter	42 03	42 04	
		4	Rebecca Johnson dead leaving 11 children, to-wit:			
1	5					
4	27	1	Joseph Johnson	3 82	3 82	
2	23					
4	27	2	John H. Johnson	3 82	3 82	
2	23					
6	24	3	A. J. Johnson	3 82	3 82	
1	15					
5	16	4	Mary Robbins	3 82	3 82	
4	6	5	Sarah D. Collier	3 82	3 82	
1	6					
2	23	6	Emily Turner	3 82	3 82	
4	27					
1	5					
4	27	7	Nesta Baother	3 82	3 82	
		8	Gola Bayley	3 82	3 82	3 82
		9	Corra Johnson	3 82		3 82
4	6	10	Nancy Stanley	3 82	3 82	
			Carried over	164 29	156 68	7 62

		Assets. brot. over	164	29	156	68	7	64
		11 James Johnson dead leaving four children, to-wit:						
4.	24	1 Mollie Hughes	95		95			
		2 Fannie Johnson	95				95	
		3 Rebecca Johnson	95				95	
		4 Rosa Johnson	95				95	
5	18	5 Joseph Smyth dead leaving 8 Children to-wit						
5	18	1 Sarah Mullins	5	25	5	25		
4	1	2 Tennessee Smyth	5	25	5	25		
1	10	3 Rebecca Olinger	5	25	5	25		
4	23	4 Emma St Smyth Tennessee	5	25	5	25		
3	23	5 Fannie Smyth Smyth	5	25	5	25		
3	23	6 Flora Smyth their	5	25	5	25		
3	23	7 Joseph Smyth Guardian	5	25	5	25		
4	1	8 America Bailey	5	25	5	25		
1	1							
5	18	6 Mrs. Q. Smyth dead leaving Four Children, to-wit:						
5	20	1 Jas. M. Smyth Elkannah	10	50	10	50		
5	20	2 Cora Wynn Wynn	10	50	10	50		
5	20	3 Jackson C. Smyth their	10	50	10	50		
5	20	4 David Smyth Guardian	10	50	10	50		
		7 America Ross, dead leaving one child, to-wit:						
2	2	1 Mary Ross	42	03	42	04		
4	23							
		Assets carried over	294	12	283	67	10	49

		5	Amts. brot- over	294	12	283	67	10	49
		8	Francis Parsons dead leaving Three children, to-wit:						
4	13	1	Emma Shank	14	01	14	01		
4	16	2	Shuman Parsons } Zion Parsons	14	01	14	01		
4	16	3	George Parsons } their guardian	14	01	14	01		
			Totals	\$336	15	325	70	10	40

Statement No. Nineteen.

Showing the distribution of ~~\$336.50~~
the share of Barbary Parsons, a sister
and devisee of Joseph H. Ely, among
her descendants; she being dead, leaving
Six children, the amount due each
and when paid; and the amount un-
paid and whom such person is, on the

Date of Payments (1901)		day of	Names of Barbary Parsons's Heirs	1901.		
				Share of Each	Paid to Each	Unpaid to Each
7	10	1	Fannie E. Fells	56	05	56 05
7	17	2	Elizabeth J. Bell	56	05	56 05
7	13	3	Samuel H. Parsons	56	05	56 05
7	13	4	Cynthia R. Strade	56	05	56 05
			Totals over	\$224	20	224 20

		<i>ants</i> <i>brok</i> <i>over</i>	24 20	224	20		
5		Emily H. Jones, dead leaving one child, to-wit:					
7 20	1	Hattie Bowers	56	05	56	05	
	6	Susan C., married a Harris, then a Perry, she is dead, leaving 5 children, to-wit:					
7 12	1	John H. Harris	11	21	11	21	
7 16	2	Maud Goodner	11	21	11	21	
7 16	3	Braz J. Perry	11	21	11	21	
7 16	4	Elsie Perry	11	21	11	21	
	5	Frank Perry	11	21			11 21
		<i>Totals</i>	33 630	225	09	11	21

33

Statement No. Twenty.

Showing the amount in said Ely & Smyth's hands as admr. of said estate, on the 4th day of October 1901; and who is entitled to the same, the amount thereof to which each person is entitled, and whether such person is a minor or adult, and residence when known.

Names	Residence		Adult or Minor	Amount due to Each.	
	Post Office	State			
Hudson Lane		Ny	Minor	95	
Belle Lane		"	do.	95	
Lera Lane		"	do.	95	
Suther Turner	Punington Gap	Va	"	1	91
Wm E. Turner	do	"	"	1	91
Howard		Ny	"	5	25
Howard		"	"	5	25
Emma Brausan		"	"	4	15
Maybelle Brausan		"	"	4	15
Lizzie Goldiron		"	"	1	86
George Goldiron		"	"	1	86
Rosie Ely		"	"	8	40
W. C. Evans		"	"	4	20
Cornelia F. Evans		"	"	4	20
Lutitia Chappell	Chappell	"		1	20
John Chappell	do	"		1	20
				48	39

Amt. brot. over				48	39
Elk. Chappell	Chappell	Qty	Min.	1	20
Allen Chappell	do	"	"	1	20
Geo. H. Chappell Jr	"	"	"	1	20
Sophia Chappell	"	"	"	1	20
Gola Bailey	Slump	7 ² / ₇	"	3	82
Lora Johnson	do	"	"	3	82
Fannie Johnson	"	"	"		95
Rebecca Johnson	"	"	"		95
Rosa Johnson	"	"	"		95
Frank Perry			"	11	21
Unpaid				74	89

1901
11-26 By amt. for contract 74 89
To amt. rec'd. G. C. Noel receiver 74 89
\$ 74 89 74 89

Statement No. Twenty One

A Recapitulation of the whole administration account of said Ely & Smyth

To Total amt. adms. Recd. per Stat. No. 1810909 21

Disbursed as follows:

Per Statement No.	2	723	41	
Atty's. fees per Statement No. 609		800	00	
Adms. Comis. per .. " No. 6.789		748	79	
Pd. to Heirs per Stat. No. 6		3296	19	
" " Devises " " " 7		1977	78	
" " Devises " " " 10		319	00	
" " " " " " 11		314	22	
" " " " " " 12		319	31	
" " " " " " 13		329	08	
" " " " " " 14		336	31	
" " " " " " 15		336	35	
" " " " " " 16		336	24	
" " " " " " 17		336	30	
" " " " " " 18		325	70	
" " " " " " 19		325	09	
Bal. In adms hands per Stat. 20		74	89	
Totals		910908	66	10909 21
Discrepancies			55	
Amt. pd. J. C. Noel receiver				74 89

1901

11-26

Smyth & Ely admr.

vs { Statments
No 1 to 21
with Cour. Finding
two reports

E. J. Punnett et al

Smyth & Ely administrators.

vs.

E. J. Punnington et al

and

John Z & Mary S. Ely

vs

J. M. Smyth et al

In Chancery.

To the Hon. H. A. H. Skene, Judge
of the Circuit Court for Lee County:

The undersigned, who was on
the 7th day of March, 1901, appointed
in said cause a special Com-
missioner for the purpose of stat-
ing and settling the adminis-
tration account of John Z. Ely and
J. Morrison Smith, administrators
of Sarah S. Ely dec'd., begs leave
to report that after giving the
attorneys in said cause ten days
notice of the time and place of his
sittings, at his office in the
town of Punnington Gap, Va., on
the 23rd day of Sept., 1901, up to
and including the 4th day of October,
1901, he proceeded to execute said
dunes; and, having reference
to the various orders in said cause,
the result of your Commissioner's

be seen by an inspection of several statements herewith filed as a part of this report, and numbered from one to twenty-one inclusive.

The statement No. one charges said administrators with what went into their hands, and shows them chargeable with \$10909.21; statement No. two shows what said administrators paid out in the way of indebtedness of this decedent, burial expenses, costs of administration, taxes &c, amounting in the aggregate to \$723.41; statement No. three shows the apportionment of said \$723.41, as per the decree of your honor entered in said first named cause on Nov. 17th 1900, in the proportion of .6534% for the Ely side and .3466% for the Pennington - Graham side.

As there is an explanation just preceding the calculations and figures of each statement, your commissioner does not deem it necessary to refer and explain particularly and explicitly each

statement from One to twenty-one; but here refers to each and every one of them, which according to the mind of your Commissioner is correct in calculations and shows, when read from the first to last, a plain and clear statement of said administrator's whole account.

Owing to the number of persons, interested in this estate, their remoteness from the parent stock and the way they were scattered over the country, it took a great deal of time to make the calculations, and almost untold trouble to find all the various persons interested, get their respective share of money to them, and the administrator get back from them proper receipts. But after very industrious efforts and ceaseless energy said administrator have found all the persons interested in said estate and have paid all except those shown in statement no. twenty; and from an inspection of statement

twenty, it will be seen, who are unpaid, the amount due to each person, and whether sui juris. From this statement it will be seen that there is yet in their hands only \$74.89. All the persons to whom this money is going are infants, except one, and all without guardians in this State.

Now on the payment of said \$74.89 and \$10⁰⁰ for recording this settlement, said administrators will have properly accounted for all the \$10909.21 that went into their hands.

Said administrators are very anxious to close their entire administration account, and they ask your honor to appoint a receiver for said \$74.89, and owing to the fact that all, but one of the parties entitled to said \$74.89 being infants of various ages, and they having no guardians in this State, your Commissioner advises that a receiver be

5

appointed to take said sum
of \$74.89, and he be required
to loan the same on good secu-
rity, and as the various persons
to whom it is going, come of
age, they be by him paid their
share as shown in statement
No. 20.

Your Commissioner desires
to say that this estate has been
wound up and brought to a close
with wonderful and extraordi-
nary dispatch, when it is taken
into account that Mrs. Ely
died April, 1900, there was
a spirited contest over the will
of Joseph M. Ely and the work
of said estate was in notes and
bands.

Now your Commissioner having
performed the duties imposed up-
on him as best he could, he prays
that this report and statements there-
with be adopted and confirmed, and
he be released from further duty.

All which is respectfully sub-
mitted this October 6th 1901.

E. H. Pennington Spe-
Commissioner.

City & Smyth adms.

vs } Report of
Adms. Settle
made by
E. H. Punnington

E. J. Punnington et al

Filed Oct 21st 1901

A. B. Mansury Clerk

Recorded in Settle-
ment of Fiduciaries
No. 4 pages 118 to 140 ..

Indexed-

Examined Feb 1st 1902



Mr. *Sarah S Ely*

1883 To **M. B. WYCAL**, Treasurer of

LEE

County, Dr.

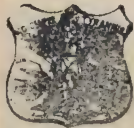
	STATE TAX, 40 cents on the \$100.	County Levy, 25 cents on the \$100.	County School Tax 10 cents on \$100.	District School Tax 10 cents on \$100.	TOTAL AMOUNT OF TAXES.
To..... Acres of Land, Value, \$.....					
Property, Income, &c., \$ <i>5440</i>	<i>21</i>	<i>76</i>	<i>13</i>	<i>60</i>	<i>3534</i>
Capitation Tax,					
County School Tax,			<i>5</i>	<i>44</i>	<i>544</i>
District School Tax,				<i>5</i>	<i>44</i>
Total	<i>21</i>	<i>76</i>	<i>13</i>	<i>60</i>	<i>4624</i>

JONESVILLE SENTINEL.

Received Payment in full,

M B Wycal Treasure.

'Ticket'



Mr. _____

18 82 To **Z. T. CECIL**, Treasurer of **LEE** County, Dr.

	STATE TAX, 40 cents on the \$ 00		County Levy, 20 cents on the \$ 100.		County School Tax 10 cents on \$ 100.		District School Tax, 3 cents on \$ 100.		TOTAL AMOUNT OF TAXES.	
To <u>22.0</u> Acres of Land, Value, \$										
Property, Income, &c., \$ <u>464.9</u>	17	34	10	38					27	72
Capitation Tax, _____	1	00	8	00					9	00
County School Tax, _____					4	85			4	85
District School Tax, _____							1	48	1	48
Total _____	18	15	20	00	6	50	1	46	45	25

1000 or 1000 P. 50.75

Ticket No. 2.

50.75
45.75
5.00

Mrs. S. S. Ely

Rocky Station District. No. 4.

To E. S. FLANARY, Treasurer Lee County, Virginia, Dr.

No. P 5 No. 120 1899 State Tax 30 St's sch'l tax Co. Levy 25 Road Tax 25 Co. sch'l tax Dis Schl tax TOTAL AMT.
cts. on \$100 10 cts on \$100 cts. on \$100 cts. on \$100 10 cts on \$100 10 cts on \$100 OF TAXES.

Head Tax	Val.	\$1.00	50	\$1.50				
Per. Prop.	8985	2695	899	24462244	899	898	98	83
No. Tracts	232	679	233	558	558	223	223	2465
Acres	236							
Lots	11217	3374	1122	2804	2804	1122	1121	12348
TOTAL								
5 per cent pen'ty								

Received Payment:
Mar 18/99

E. S. Flanary, Treasurer.

Mr *Sarah S Ely*

Rocky Station District. No. 4.

To W. E. WYNN, Treasurer Lee County, Virginia, Dr.

No. P	No. L	1893	State Tax 30	State sch't tax	Co Levy 25	Road Tax 25	Co. sch't tax	Dis sch't tax	TOTAL AMT.
5	32	55	cts. on \$100	10 cts on \$100	cts. on \$100	cts. on \$100	10 cts on \$100	10 cts on \$100	OF TAXES.
Head Tax			\$1.40		50				\$1.50
Per. Prop.			84/10	252.3	841	2102	2102	841	8419257
No. 2	Tracts	2232	479	225	558	558	225	225	2448
236	Acres								
Lots			1064	5202	1064	2750	2460	1064	106411719
A TOTAL									
5 per cent pen'ty									

Received Payment

ES Manary

Treasurer.

Mr. *Sarah Ely* Rocky Station District, No. 4
 To W. E. WYNN, Treasurer Lee County, Virginia, Dr.

No. P	No. L	1897	State Tax 30	St'e sch'l tax	Co. Levy 30	Road Tax 20	Co. sch'l tax	Dis Schl tax	TOTAL AMT.
			cts. on \$100	10 cts on \$100	cts. on \$100	cts. on \$100	10 cts on \$100	10 cts on \$100	OF TAXES.
Head Tax			\$1.00		.50				\$1.50
Per. Prop.		8460	25.38	846	25.38	1692	846	846	93 06
No. Tracts		222	869	223	669	440	222	223	246.5
Acres									
Lois		10492	5207	1049	5207	2138	1069	1069	1961
TOTAL									
5 per cent pen'ty									

Nov 23/97
 Received Payment *Ed H. H. H. H. H.* Treasurer.

Mr. Israh S. Ely

Rocky Station District.

No. 4

To W. E. WYNN, Treasurer Lee County, Virginia,

Dr.

No. P	No. L	1896	State Tax 30	St's sch'l tax	Co. Levy 40	Road Tax 20	Co. sch'l tax	Dis Schl tax	TOTAL AMT.
6	5-6	Val.	cts. on \$100	10 cts on \$100	cts. on \$100	cts. on \$100	10 cts on \$100	10 cts on \$100	OF TAXES.
			\$1.00		.50				\$1.50

Head Tax

Per. Prop.

No. 2 Tracts

2 36 ³/₄ Acres

Lots

TOTAL

5 per cent pen'ty

Received Payment

Treasurer.

Clarice

$$\begin{array}{r} 126.96 \\ 6.32 \\ \hline 120.64 \end{array}$$

Mr. Sarah S. G. Rocky Station District.

No. 4

To W. E. WYNN, Treasurer of Lee County, Virginia, Dr.

No. P	No. L	State Tax 30	State sch'l tax	Co. Levy 40	Road tax 20	Co Sch'l tax	Dis. Sch'l tax	TOTAL	AMT.
		cts. on \$100	10 cts on \$100	cts. on \$100	cts. on \$100	10 cts on \$100	10 cts. on \$100	OF TAXES.	
Head Tax	Val.	\$4 00		50				\$1 50	
Per. Prop.	79 00	23 70	7 90	31 60	13 80	7 90	7 90	94 80	
No. 2 Tracts									
256 1/4 Acres	22 32 1/2	6 70	2 24	8 74	4 40	2 24	2 24	26 92	
Lots									
TOTAL		30 40	10 14	40 54	20 27	10 14	10 14	121 62	
5 per cent pen'ty									

Received Payment E. S. [Signature] Treasurer.

$$\begin{array}{r} 100 \\ 62 \\ \hline 38 \end{array}$$

Mr. *Sarah S. Ely*

ROCKY STATION DISTRICT.

No. 3

To

J. A. G. HYATT, Treasurer of Lee County, Virginia,

Dr.

No. P <i>5</i>	No. L <i>27-1894</i>	State Tax 30 cts. on \$100.	State sch'l tax 10 cts on \$100	Co. Levy 40 cts. on \$100	Road Tax 20 cts. on \$100	Co, Sch'l tax 10 cts. on \$100	Dis. Sch'l tax 10 cts. on \$100	TOTAL AMT. OF TAXES,
<i>9</i>	<i>18</i> Val.	\$100		30				\$100
Head Tax								
Per. Prop.	<i>7830</i>	<i>2349</i>	<i>783</i>	<i>3132</i>	<i>1566</i>	<i>783</i>	<i>783</i>	<i>9396</i>
No. <i>2</i> Tracts								
<i>2363</i> Acres	<i>2329 1/2</i>	<i>670</i>	<i>224</i>	<i>893</i>	<i>446</i>	<i>224</i>	<i>224</i>	<i>2681</i>
Lots								
TOTAL		<i>3019</i>	<i>1007</i>	<i>4025</i>	<i>2012</i>	<i>1007</i>	<i>1007</i>	<i>12077</i>
5 per cent pen'ty								

Received Payment *Octo 31st 1894 J. A. G. Hyatt* Treasurer.

120.77 ; ;

89.64

31.13

MR. *Ely Sarah S.*

District No. *3*

1893.

TO

J. P. GRAHAM, TREASURER OF LEE COUNTY, VA.

DR.

TRACTS.		State Tax 30 cents on the \$100.		State School Tax, 10 cents. on the \$100.		Co. School Tax, 10 cents. on the \$100.		Dist. School Tax, 10 cents. on the \$100.		Road Tax, 15 cents on the \$100.		County Levy 25 cents on the \$100.		TOTAL AMOUNT OF TAXES.	
<i>2</i>															
To <i>36 3/4</i> acres land, val. <i>\$2232</i>		<i>6</i>	<i>70</i>	<i>2</i>	<i>24</i>	<i>2</i>	<i>24</i>	<i>2</i>	<i>24</i>	<i>3</i>	<i>37</i>	<i>5</i>	<i>59</i>	<i>22</i>	<i>38</i>
Property, income, etc.	<i>8010</i>	<i>24</i>	<i>03</i>									<i>20</i>	<i>03</i>	<i>44</i>	<i>06</i>
Capitation Tax, . . .			<i>00</i>												<i>00</i>
County School Tax, .				<i>8</i>	<i>01</i>									<i>8</i>	<i>01</i>
District School Tax, .						<i>8</i>	<i>01</i>							<i>8</i>	<i>01</i>
State School Tax, . .								<i>8</i>	<i>01</i>	<i>12</i>	<i>02</i>			<i>20</i>	<i>03</i>
Total, . . .														<i>102</i>	<i>49</i>

Received Payment in full,

John P. Graham

Treasurer.

12

10.2.4.9.
10

500
249

2.51

92.49

MR. Ely Sarah S.District No. 8

1892.

TO

J. P. GRAHAM, TREASURER OF LEE COUNTY, VA.

DR.

<u>2</u> TRACTS.	STATE TAX, 30 cents on the \$100.	State School Tax, 10 cents on the \$100.	County School Tax, 10 cents on the \$100.	District School Tax, 10 cents on the \$100.	Road Tax, 15 cents on the \$100.	County Levy, 25 cents on the \$100.	TOTAL AMOUNT OF TAXES.
To <u>236 3/4</u> acres land, val. <u>22326 1/2</u>	6 70	2 24	2 24	2 24	3 37	5 59	22 38
Property, income, etc. <u>7460</u>	22 38						22 38
Capitation Tax, 00						. 00
County School Tax, . .		7 46					7 46
District School Tax, . .			7 46				7 46
State School Tax, . . .				7 46	11 19	18 65	37 30
Total, . . .							96 98

Received Payment in full,

John P. Graham Treasurer.

$$\begin{array}{r} 22.32 \\ 74.60 \\ \hline 96.92 \end{array}$$

MR. *Eugene S.*District No. *3*

1891.

TO J. P. GRAHAM, TREASURER OF LEE COUNTY, VA. DR.

<i>1</i> TRACTS.	State Tax 30 cents on the \$100.	State School Tax, 10 cents on the \$100.	Co. School Tax, 10 cents. on the \$100.	Dist. School Tax, 10 cents on the \$100.	Road Tax, 15 cents on the \$100.	County Levy 40 cents on the \$100.	TOTAL AMOUNT OF TAXES.
To <i>225</i> acres land, val. <i>\$1693</i>	<i>5 08</i>	<i>1 69</i>	<i>1 69</i>	<i>1 69</i>	<i>2 54</i>	<i>4 23</i>	<i>16 92</i>
Property, income, etc. <i>7700</i>	<i>23 10</i>				<i>11 58</i>	<i>19 25</i>	<i>53 93</i>
Capitation Tax, . .					<i>11 58</i>	<i>19 25</i>	
County School Tax, .		<i>7 70</i>					<i>7 70</i>
District School Tax, .			<i>7 70</i>				<i>7 70</i>
State School Tax, . .				<i>7 70</i>			<i>7 70</i>
Total, . . .						<i>1</i>	<i>893.95</i>

80.00

50

130.00
93.75

36.05

MR.

Chas. Sarah S.

District No.

3

1890.

TO

J. P. GRAHAM, TREASURER OF LEE COUNTY, VA.

DR.

TRACTS.	State Tax 30 cents on the \$100.	State School Tax, 10 cents on the \$100.	Co. School Tax, 10 cents on the \$100.	Dist. School Tax, 10 cents on the \$100.	Road Tax, 15 cents on the \$100.	County Levy 40 cents on the \$100.	TOTAL AMOUNT OF TAXES.
To <i>225 1/2</i> acres land, val. <i>\$1692 1/2</i>	<i>5 08</i>	<i>1 69</i>	<i>1 69</i>	<i>1 69</i>	<i>2 54</i>	<i>4 23</i>	<i>16 92</i>
Property, income, etc. <i>6780</i>	<i>20 94</i>				<i>10 47</i>	<i>17 45</i>	<i>48 86</i>
Capitation Tax, . . . <i>00</i>							<i>00</i>
County School Tax, . . .		<i>6 98</i>					<i>6 98</i>
District School Tax, . . .			<i>1 98</i>				<i>6 98</i>
State School Tax, . . .				<i>1 98</i>			<i>6 98</i>
Total, . . .							<i>86 72</i>

Received Payment in full.

John P. Graham

Treasurer.

MR.

1889.

Ely Sarah, S.

District No. 8

TO J. P. GRAHAM, TREASURER OF LEE COUNTY, VA. DR.

2 TRACTS.		State Tax 30 cents on the \$100.	State School Tax, 10 cents on the \$100.	Co. School Tax, 10 cents on the \$100.	Dist. School tax 10 cents on the \$100.	Road Tax, 15 cents on the \$100.	County Levy 40 cents on the \$100.	TOTAL AMOUNT OF TAXES.
To 225 ³ / ₄ acres land, val. \$1806	5 42	1 81	1 81	1 81	2 71	7 23	20 79	
Property, income, etc. 6320	18 96				9 48	25 28	53 72	
Capitation Tax . . .	00						00	
County School Tax, .			6 32				6 32	
District School Tax, .				6 32			6 32	
State School Tax, . .					6 32		6 32	
Total, . . .							93 47	

1806.

6320

8122

1155

90530

8122

9026

73.44

105-

73.47

11.53

Mr. *Ely Sarah S.*

District No. *3*

1888. To *J. P Graham, Treasurer of*

Lee

County, Dr.

<i>1</i> TRACTS.	State Tax, 50 cents on \$100.	County Levy, 50 cents on \$100.	County School Tax, 10 cents on \$100.	District School Tax, 10 cents on \$100.	State School Tax, 10 cents on \$100.	Read Tax.	TOTAL AMOUNT OF TAXES.
To <i>225 3/4</i> Acres land, value, \$ <i>1806</i>	<i>5 42</i>	<i>9 03</i>	<i>1 81</i>	<i>1 81</i>	<i>1 81</i>	<i>3 61</i>	<i>23 49</i>
Property, income, etc. <i>ESTATE</i>	<i>69 53</i>	<i>20 86</i>	<i>34 76</i>				<i>55 62</i>
Capitalization Tax, . . .							<i>6 95</i>
County School Tax, . . . <i>45 58</i>			<i>6 95</i>				<i>6 95</i>
District School Tax, . . .				<i>6 95</i>			<i>6 95</i>
State School Tax, . . .					<i>6 95</i>		<i>6 95</i>
Total,						<i>13 91</i>	<i>13 91</i>

Received Payment in full,

John P Graham

\$115 87
Treasurer.

12000
11387

6.13

2953
1106
8759
130
262470
8759
11387

Mrs. Sarah S. Elg District No. 07
 1887. To J. P. Graham, Treasurer of Lee County, Dr.

<u>2</u> TRACTS.		State Tax, 30 cents on \$100.	County Levy, 50 cents on \$100.	County School Tax, 10 cents on \$100.	District School Tax, 10 cents on \$100.	State School Tax, 10 cents on \$100.	TOTAL AMOUNT OF TAXES.	
To <u>278 1/4</u> acres land, value, \$	2280	6 49	11 15	2 23	2 23	2 23	4 46	Total 28.99
Property, income, etc.	6225	78 67	31 12	2 23				49.79
Capitation Tax, . . .								
County School Tax, . . .				6 23				6.23
District School Tax, . . .					6 22			6.22
State School Tax, . . .						6 22	12.44	18.66
Total,								\$109.89

Received Payment in full, John P. Graham Treasurer.

Tax Ticket
for 1887

\$ 107-87

Mr. Sarah J. Egan
1886.

District No. _____

To M. B. WYGAL, Treasurer of Lee County,

Dr.

TRACTS.	STATE TAX, 30 cents on the \$100.	County Levy, 50 cents on the \$100.	County School Tax 10 cents on \$100.	District School Tax, 10 cents on \$100.	State School Tax, 10 cts on the \$100.	TOTAL AMOUNT OF TAXES
To <u>9253</u> / <u>4</u> acres land value	\$1906	5 42	9 03	1 81	1 81	19 89
Property, income, etc.,	5975	17 95	29 87	5 98	5 98	65 76
Capitation Tax.		—	—			—
County School Tax.						
District School Tax.						
State School Tax.						
Total		23 87	38 90	7 79	7 79	85 64

Received Payment in full,

M. B. Wygal

Treasurer.

Mr. Sarah D. Ely
1885.

District No. 3

To M. B. WYGAL, Treasurer of Lee County,

Dr.

	State Tax, 30 cts. on the \$100.	County Levy, 25 cts. on the \$100.	State School Tax, 10 cts. on the \$100.	County School Tax, 10 cts. on the \$100.	Dis't. School Tax, 10 cts. on the \$100.	Total Am't. of Taxes.
..... 1 TRACTS.						
To <u>2253</u> acres land value <u>1806</u>	<u>542</u>	<u>542</u>	<u>181</u>	<u>181</u>	<u>181</u>	<u>1627</u>
Property, income, etc. <u>5670</u>	<u>1711</u>	<u>1701</u>	<u>567</u>	<u>567</u>	<u>567</u>	<u>5103</u>
Capitation Tax,						
State School Tax,						
County School Tax,						
District School Tax,						
Total,	<u>2243</u>	<u>2243</u>	<u>748</u>	<u>748</u>	<u>748</u>	<u>6730</u>

RECEIVED PAYMENT.

M B Wygal COUNTY TREASURER.

Mr^d Sarah J. Clay

District No. 3

1884. To M. B. WYGALL, Treasurer of LEE County, Dr

	State Tax, 30 cents on the \$100.	State School Tax, 10 cts. on the \$100.	County Levy 25 cts. on the \$100.	Co. School 10 cts. on the \$100.	Dist. School Tax 10 cents on \$100.	TOTAL AMOUNT OF TAXES.
To.....Acr's Land value						
Property, Income, etc	58.30	17.52	5.84	15.09	5.84	5.84
Capitation Tax.....						
State School Tax.....						
County School Tax.....						
District School Tax....						
Total						50.13

Received Payment,

M B Wygall

M. B. WYGALL, County Treasurer.

The Progressive Age Job Office, Estillville, Seckt County, Va.

8213

15

25-16

Mr. Joseph N. Ely

District No. 2

1884.

To M. B. WYGAL, Treasurer of Lee County,

Dr.

<u>2</u> TRACTS.		State Tax, 30 cents on the \$100.	County Levy, 25 cents on the \$100.	State School Tax, 10 cents on the \$100.	County School Tax, 10cts. on the \$100.	District School Tax, 10cts. on the \$100.	Total Amount of Taxes.
To <u>2-25-3</u> <u>4</u> acres land value	<u>1689 75</u>	<u>5 16</u>	<u>4 22</u>	<u>1 69</u>	<u>1 69</u>	<u>1 69</u>	<u>14 45</u>
Property, income, etc. - - -							
Capitation Tax, - - - - -							
State School Tax, - - - - -							
County School Tax, - - - - -							
District School Tax, - - - - -							
Total, - - - - -							<u>14 45</u>

RECEIVED PAYMENT.

M. B. Wygal

COUNTY TREASURER.

Tickets No 3.

Tax Tickets filed as
Exhibits with the deposition
of John Z. Ely.

PERMINGTON GROSS
ATTORNEYS-AT-LAW,
PERMINGTON, CALIF. AND JONESVILLE, LA.

8985-
825-
9810
4848
49.62

4848
4251
597.

PERSONS, PROPERTY, AND OTHER SUBJECTS

Ascertained for Taxes and Levies in the County of Lill, within 3rd District, E. S. Larmer, Commissioner of the Revenue,

JAMES E. GOODE, Printer, 824 Main street, Richmond.

Fill all the blanks on this page and add up each column.

NAME OF THE COUNTY:

Lill

NAME OF THE DISTRICT:

Rocky Station

No. OF THE DISTRICT:

NAME OF THE COMMISSIONER:

E. S. Larmer

SCHEDULE A.

1 2
1 2

White Males and Colored Males ascertained for State taxes.

No. of white male inhabitants who have attained the age of 21 years, taxed at one dollar.
No. of colored male inhabitants who have attained the age of 21 years, taxed at one dollar.

RESIDENCE OF EACH TAXPAYER.

NAMES OF PERSONS CHARGED WITH TAXES.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

Value.

No.

OF TAXATION FOR THE YEAR 1882,

which were therein on the first day of February, or which were removed therein before the Commissioner's Books were delivered to the Officer charged with collection of Taxes.

Fill all the blanks on this page and add up each column.

NAME OF THE COUNTY: Lee

NAME OF THE DISTRICT: Rocky Station

No. OF THE DISTRICT: 3rd

NAME OF THE COMMISSIONER: E. S. Larimer

SCHEDULE C.—Taxed at Forty Cents on the One Hundred Dollars' Value.													SCHEDULE D.—Income.		TOTAL TAX.	PUBLIC FREE SCHOOL PURPOSES.			COUNTY PURPOSES.	PROOF.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																			
25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	Name or No. of the School District.	Amount of tax levied for County free school purposes.	Amount of tax levied for District free school purposes.	Total levy for County and District free school purposes.	Amount of tax levied for County purposes.	SCHEDULE A.		No.	TAX.	TOTAL TAX.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																														
Tax on aggregate value of personal property enumerated in Schedule B, taxed at forty cents on the one hundred dollars' value.	Value of all solvent bonds, demands, claims, notes, and other evidences of debt.	Value of capital, including moneys, credits, or other thing remaining invested, whether said investment was made originally in this or any other state or county, loaned, used, or employed in business out of this state.	Value of all capital of incorporated joint stock companies, building or loan associations, not otherwise taxed.	Capital invested, used, or employed in any trade or business.	All money on deposit with any bank or other corporation, firm, or person.	All money and the value of principal and interest, and personal estate and credits under his control as court receiver or commissioner, in pursuance of any order, judgment, or decree of any court, as agent, guardian or other fiduciary.	The amount of any money, and the value of any personal estate or credits, deposited to the credit of any suit and not in the hands of a court receiver.	Value of all toll-bridges, turnpikes, and ferries.	Aggregate value of personal property enumerated in Schedule C, taxed at forty cents on the one hundred dollars' value.	Tax on aggregate value of personal property enumerated in Schedule C, taxed at forty cents on the one hundred dollars' value.	Total value of all property in Schedules B and C.	Total tax on all property in Schedules B and C.	Aggregate amount of income in excess of \$600 received or due, though not received within the year next preceding the first of February, taxed at one per centum.	Tax on aggregate amount of income in excess of \$600 received or due, though not received within the year next preceding the first of February, taxed at one per centum.	Total amount of state taxes on all subjects, viz: Persons in Schedule A, Personal Property in Schedule B, Personal Property in Choses in Action, &c., in Schedule C, and Income in Schedule D.						SCHEDULE B.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																						
1	2 39 4257								4257	1700 4848		19 39			20 39		488 1 45	6 30	15-05-																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																				</

PERSONS, PROPERTY, AND OTHER SUBJECTS

Ascertained for Taxes and Levies in the County of

—, within

District, _____

—, Commissioner of the Revenue,

JAMES E. GOODE, Printer, 824 Main street, Richmond.

Fill all the blanks on this page and add up each column.

NAME OF THE COUNTY:

NAME OF THE DISTRICT:

No. OF THE DISTRICT:

NAME OF THE COMMISSIONER:

SCHEDULE B.—Taxed at Forty Cents on the One Hundred Dollars' Value.

[illegible]

"Morgan No. 1."

Fill all the blanks on this page and add up each column.

SCHEDULE C.—Taxed at Forty Cents on the One Hundred Dollars' Value.													SCHEDULE D.—Income.		TOTAL TAX.	PUBLIC FREE SCHOOL PURPOSES.			COUNTY PURPOSES.	PROOF.																																																																																																																																																																																																																																																																																																																																																																																																																								
25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	Name or No. of the School District.	Amount of tax levied for County free school purposes.	Amount of tax levied for District free school purposes.	Total levy for County and District free school purposes.	Amount of tax levied for County purposes.	SCHEDULE A.																																																																																																																																																																																																																																																																																																																																																																																																																							
Tax on aggregate value of personal property enumerated in Schedule B, taxed at forty cents on the one hundred dollars' value.	Value of all solvent bonds, demands, claims, notes, and other evidences of debt.	Value of capital, including moneys, credits, or other thing remaining invested, whether said investment was made originally in this or any other state or country, interest used, or employed in business out of this state.	Value of all capital of incorporated joint stock companies, building or loan associations, not otherwise taxed.	Capital invested, used, or employed in any trade or business.	All money on deposit with any bank or other corporation, firm, or person.	All money, and the value of principal and interest, and personal estate and credits, under his control, and the value of any order, judgment, or decree of any court, as agent, guardian or other fiduciary.	The amount of any money and the value of any personal estate or credits, deposited to the credit of any suit and not in the hands of a court receiver.	Value of all toll-bridges, turnpikes, and ferries.	Aggregate value of personal property enumerated in Schedule C, taxed at forty cents on the one hundred dollars' value.	Tax on aggregate value of personal property enumerated in Schedule C, taxed at forty cents on the one hundred dollars' value.	Total value of all property in Schedules B and C.	Total tax on all property in Schedules B and C.	Aggregate amount of income in excess of \$600 received or due, though not received within the year next preceding the first of February, taxed at one per centum.	Tax on aggregate amount of income in excess of \$600 received or due, though not received within the year next preceding the first of February, taxed at one per centum.	Total amount of state taxes on all subjects, viz: Persons in Schedule A, Personal Property in Schedule B, Personal Property in Choses in Action, &c., in Schedule C, and Income in Schedule D.																																																																																																																																																																																																																																																																																																																																																																																																																													
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429

Clerk 25th
" Morgan No 1 "
Exhibit with
B. M. Morgan Sep-

PERSONS, PROPERTY, AND OTHER SUBJECTS

Ascertained for Taxes and Levies in the County of

_, within

District,

_____, Commissioner of the Revenue,

JAMES E. GOODE, Printer, 824 Main street, Richmond.

Fill all the blanks on this page and add up each column.

NAME OF THE COUNTY:

NAME OF THE DISTRICT:

No. OF THE DISTRICT:

NAME OF THE COMMISSIONER:

[illegible]

Lee

within

District, _____

E. S. Larmer

, Commissioner of the Revenue,

JAMES E. GOODE, Printer, 824 Main street, Richmond.

Fill all the blanks on this page and add up each column.

NAME OF THE COUNTY:

NAME OF THE DISTRICT:

No. OF THE DISTRICT:

NAME OF THE COMMISSIONER:

[illegible]

OF TAXATION FOR THE YEAR 1883,

which were therein on the first day of February, or which were removed therein before the Commissioner's Books were delivered to the Officer charged with collection of Taxes.

Fill all the blanks on this page and add up each column.

NAME OF THE COUNTY: Lee

NAME OF THE DISTRICT: Rocky Station

No. OF THE DISTRICT: 3rd

NAME OF THE COMMISSIONER: E. S. Larmer

SCHEDULE C.—Taxed at Forty Cents on the One Hundred Dollars' Value.													SCHEDULE D.—Income.		TOTAL TAX.	PUBLIC FREE SCHOOL PURPOSES.			COUNTY PURPOSES.	PROOF.													
25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40																		
Tax on aggregate value of personal property enumerated in Schedule B, taxed at forty cents on the one hundred dollars' value.	Value of all solvent bonds, demands, claims, notes, and other evidences of debt.	Value of capital, including moneys, credits, or other thing remaining invested whether said investment was made originally in this or any other state or country, loaned, used, or employed in business out of this state.	Value of all capital of incorporated joint stock companies, building or loan associations, not otherwise taxed.	Capital invested, used, or employed in any trade or business.	All money on deposit with any bank or other corporation, firm, or person.	All money, and the value of principal and interest, and personal estate and credits under his control as court receiver or commissioner, or the purchase of any order, judgment, or decree of any court, as agent, guardian or other fiduciary.	The amount of any money, and the value of any shares or credits, deposited to the credit of any suit and not in the hands of a court receiver.	Value of all toll-bridges, turnpikes, and ferries.	Aggregate value of personal property enumerated in Schedule C, taxed at forty cents on the one hundred dollars' value.	Tax on aggregate value of personal property enumerated in Schedule C, taxed at forty cents on the one hundred dollars' value.	Total value of all property in Schedules B and C.	Total tax on all property in Schedules B and C.	Aggregate amount of income in excess of \$500 received or due, though not received within the year next preceding the first of February, taxed at one per centum.	Tax on aggregate amount of income in excess of \$500 received or due, though not received within the year next preceding the first of February, taxed at one per centum.	Total amount of state taxes on all subjects, viz: Persons in Schedule A, Personal Property in Schedule B, Personal Property in Choses in Action, &c., in Schedule C, and Income in Schedule D.	Name or No. of the School District.	Amount of tax levied for County free school purposes.	Amount of tax levied for District free school purposes.	Total levy for County and District free school purposes.	Amount of tax levied for County purposes.	No.	Tax.	Total Tax.										
2 12	4910								4910	19 64	5440	21 76			21 76		5 44	5 44	10 88	13 60													
Virginia Lee County, to-wit: I, B. M. Morgan, Clerk of the County court for said county, do certify that the foregoing is a true transcript from the Personal Property Book for the year 1883, page 5-line 15, Third Commissioner's District as the same appears on said book in my office. Given under my hand this 11th day of September, 1901.																																	

Virginia Lee county, to-wit:
I, B. M. Morgan, Clerk of the County Court for said County
do certify that the foregoing is a true transcript from the Personal Property
Book for the year 1883, page 5-line 15, Third Commissioner's Dis-
trict as the same appears on said book in my office. Given
under my hand this 11th day of September, 1900.
B. M. Morgan Clerk

Ely & Smith Admors

vs

Elizabeth Pennington et als

} In Bancery.

It is insisted for the Ely heirs; that the decree of the Court is that the Pennington heirs (Mrs Ely's) are entitled to the increment to the estate of Joseph N. Ely after his death, provided the same can be ascertained, and that it devolves upon them to furnish, before the Commissioner, proof of what it is by legitimate evidence. Have they done that?

As to the first enquiry to be made by the Court in regard to the real estate there is no difficulty about that, that has been agreed.

As to the second enquiry; as to what personal property Mr Ely left at the time of his death, its kind, nature & value, the Pennington heirs undertake to prove what property he had & its value by the Commissioner of the Revenue Book for 1882. This evidence is objected to as inadmissible. It is not legitimate evidence to prove the value of the property. It may be admissible to prove that he had the property listed for taxation & that the taxes charged were assessed on that.

Valuation. See Greenleaf Vol 1. p. 590 5493

But it is not admissible under this decree to prove the value of the property owned by him at the time of his death, or what property he owned at that time, Decr 11th 1882. This is so for the best of reasons. It is proven by E. G. Parsons that there is a great difference between the assessed value of personal property for taxation and its true value, and it is a matter of common notoriety or of which we all have knowledge that this is true, Hence the impropriety of the admission of such evidence. See L. R. Annotated Vol 5 - 523-4. Which is a case very similar to the one under consideration, and decided by the West Va Court of Appeals.

The assessment here relied on was made as of Feb 1st 1882, & Cily died Decr 11th 1882. There is no other evidence as to what property Mr Cily had at the time of his death or its value, except the statements of some witnesses as to some articles and their value, but there is nothing sufficiently definite and certain as to what was there at his death and what was there at her death and its value, on which to base a ^{report or} decree, Mrs Graham & Mr Cily say the household &

kitchen furniture was about the same.
Kissam Ely ^{with others} makes that the horses & cattle
were worth much more than what
they were assessed at, but this only
shows the impropriety of admitting the
assessors books, and gives nothing
definite on which to base a decree.

As to the increase to be enquired into
under the 3rd Clause of the decree.

The Pennington heirs have utterly failed to
show by legitimate evidence what the
increase was, if any; and if we take the
entire evidence there is nothing sufficient-
ly definite on which can be based a decree
or report. Can any one take the evidence
in this case and ascertain and say that
there is an increase of so many dollars.
Parsons says that in calculating Mrs Ely's notes
he does not remember to have observed
any losses, though there might have
been. Thinks there were gains, & some
years more than others. Does this relieve
the situation of uncertainty? Who knows
or who has proved, that the notes of
Mrs Ely's, calculated by Mr Parsons, were
all derived by her from Jos A Ely's Est? [?]
Who knows but what she may have de-
rived some estate or property from some
other source, that became a part of those

See Robinson
Vol 1 - 47
Vol 6 - 2nd Ed
A. & C. of New
York.

notes. It was her duty, if she expected to
enjoy the increase, to so keep the estate
that the increase could be ascertained,
and if she so mixed and mingled the prop-
erty that it is impossible for her heirs
to ascertain and show the increase, it is
their misfortune, and under the decree
of the Court the increment is not ascer-
tainable. The copies of the appraisement &
sale bill of Sarah Ely are not legiti-
mate evidence for the purpose for which
they were introduced. In a suit against
a personal representative for an account
of his administration an appraisement
is prima facie evidence that the property
appraised went into his hands and of its
value. But this is not that kind of case.
And the sale bill is not evidence of the
cash value of her property. The sale was
on time, and it is well known that there
is considerable difference between what
property will bring at a sale for cash,
and when sold on time, and who can tell
the difference, at a guess, in dollars and
cents. Can you Mr Court? Can any one?
These people, perhaps, could have proved the
actual cash value of every article or piece
of property of Mrs Ely's sold at the sale.

but they preferred not to do this, or they thought they could not do it and did not try. It was their duty under the decree to show what property was there at the date of the death of Joseph Kelly, Decr 11th 1852, its nature and value, and what property was there at the date of the death of his widow, its nature & value, and what had been the increment to the estate of Joseph Kelly decd, the rents & profits &c. if any, and its nature. They have not attempted to show any rents and profits of the real estate, and have admitted in that way that there were none, and they have sworn that there was no increase in the household & kitchen furniture.

Now if they have failed to show an increase in the estate, in any particular, by legitimate evidence, and the amount of the increase and its nature, then we insist that there is no increase, or that the same is not ascertainable, and that they have failed to show themselves entitled to anything from that source and the Court should so report. Respectfully submitted.

Sept 14th 1900.

Bennington Bros }
Or F. Greene } Esrs Kelly & heirs.

My & Emma Adams
vs. Brief
Elizabeth Pennington 1851

For Rent - Cover

J.Morrison Smyth et al Admrs &c.

vs.

America Graham et als.

This suit was instituted by the administrators of Sarah S.Ely, deceased for the purpose of construing the last will and testament of her deceased husband, Joseph N.Ely.

Joseph N.Ely, the testator, and Sarah S.Pennington, the plaintiffs' decedent were married in the year 1834. Said testator died in the year 1882 leaving his wife surviving him. The said Sarah S.Ely, the surviving wife died in the year 1900. They were childless and they were each possessed, at the time of their respective deaths, of considerable property, and it is claimed by the plaintiffs in their bill that a construction of the will of the said Joseph N.Ely is necessary to a full and correct distribution of the property left by said decedent.

It will be observed the the will here sought to be construed was made on the 20th day of January 1863, nearly twenty years before the death of the testator, and thirty-seven years before the death of his widow.

It is sought to aid the Court in construction of said will by oral testimony. This testimony, as we regard it, is not admissible for the purpose, and if admissible the testimony introduced by the plaintiffs has no bearing at all upon the issue because it is not explanatory of the intention of the testator, its tendency being, if it has any weight at all, to prove a subsequent intent of the decedent Sarah S.Ely, or at most, her construction of the will of her deceased husband.

Now at the outset of this discussion, we admit that in the construction of wills, the intention of the testator, when ascertained, is the great "Polar star" which is to guide the Court in coming to its conclusion, but the intention which thus guides the court is, and must be, the intention expressed by the will itself, not the supposed intention of the testator. This intention must be gathered and ascertained from the words actually used by the testator, and such meaning must be given to these words as they reasonably bear, as used in the instrument.

Judge Richardson in speaking for the Court in Stokes et al Vs. Van Wick et al, 83 Va. 734, says "In interpreting wills the intention of the testator must be sought and followed, and that intention must be looked for in the will itself, and the true inquiry is not what the testator meant to express, but what the words used by him do express. To the same effect is the law as laid down by the text writers. See 1 Greenleaf's Evi. sec. 277 &c 289 &c.

The bill in this case intimates or states three probable contentions of the true construction of said will. It is doubtless true that among the persons interested, or who claim to be interested, in said estate, that each of the probable contentions mentioned in said bill, will have its advocates, and as matter of convenience we will take up these contentions in their inverse order.

The third probable contention is set out in the plaintiffs bill in these words: "That said will in law gives absolutely and in fee simple all the estate both real and personal to the said Sarah S. Ely, and she having died intestate, the same under the statute of descents will pass and should be dispursed among said American Graham, one share, to said John H. Pennington, Sarah E. Myers, Cynthia Myers and Mary P. Ely, children of said Tobias S. Pennington another share, and to be equally divided among them, and another share to said Thomas Garrison and Daniel G. Simpson to be equally divided between them, and a one-half share to said Children of said Amanda Peasor to be equally divided among them; and said descendants of said ten brothers and sisters of said Joseph N. Ely take nothing". The correctness of this contention depends upon whether or not Sarah S. ^{Ely}~~Pennington~~ took a fee-simple in the estate devised by her husband or only a life estate therein, and this depends upon whether or not the devise and bequest to the said Sarah S. Ely is coupled with an unrestrained power in her to use, consume or dispose of said property. The law is well settled both by courts and text writers "that an estate for life, coupled with the absolute power of alienation, either expressed or implied, comprehends everything, and the devisee takes the fee. So firmly fixed is this principle of law, that it may now be regarded as a canon of property". 91 Va. 433-4.

The devise and bequest to be construed is in this language: "And in the third place I desire and will all the remainder of what I am possessed at my decease both real and personal to Sarah S. Ely my wife I desire that she shall have the sole use and control of it so long as she may live, and after her decease and after all her just debts and funeral expenses are paid I then desire one-third of all my estate at that time both real and personal to be equally divided between my wives brothers and sisters if living &c - - - I desire and will the other two-thirds of my estate both real and personal to be equally divided between my brothers and sisters if living &c." Now we contend that this language cannot be reasonably construed otherwise than that the devisee, Sarah S. Ely, under it has not only the power to use said property, but to dispose of it, or consume it if she so desires. She had the power to charge ^{it} with debts, and no limitation is imposed upon her as to the amount of debt with which she could encumber it nor as to the nature or character of such encumbrance. It might be by mortgage, it might be by deed of trust or even by absolute sale. All the limitation imposed is, that it should be "her just debts". This implies an absolute power of disposition, consumption and alienation. If this were all it would seem to us to leave no doubt that the testator intended to give to his wife with whom he had lived for so many years the unlimited power, not only to use said property, but to consume it, should she so desire, her happiness and her pleasure being ^{his} ~~his~~ sole desire. But this is not all the language used. A few more words are added as if to give emphasis to the foregoing. After thus providing for the payment of her debts and funeral expenses the testator then continued: "I then desire one-third of all my estate at that time both real and personal be equally divided &c." Now what time is referred to? It is the death of his wife. The language used is: "And after her decease, and after all her just debts and funeral expenses are paid I then desire one-third of all my estate at that time &c.". Now what estate is meant? We are not left in doubt. The testator tells us; "all my estate at that time both real and personal". At what time? After the death of his wife and after the payment of all her just debts and funeral expenses. Then it is what estate that may remain after these things have

happened. This implies, not only a power of consumption in life, but it expressly declares a power of consumption ^{after death} by the payment of debts incurred during life, if required for the purpose of paying said debts and funeral expenses. What remains or might remain at her death and after her debts and funeral expenses were paid was all that was to go over. The language forcibly implies an unlimited and unqualified power of disposition. Sarah S. Ely, the devisee, could acquire no greater estate, nor exercise no greater power over it. To put any restriction upon her absolute dominion over said property would be to say, that the whole or a certain part of it should go over to the remaindermen or second takers, when the will expressly says that only all of my estate at that time, shall go over. That is, such as has not been used or consumed. Mr. Minor says " although a devise be expressly for the life of the devisee, yet if the devisee be by other clauses of the will, permitted to use or dispose of the subject absolutely at his pleasure, or if so much as may remain undisposed of at his death (which implies a power of unqualified disposition), be given over at his decease, the devisee is construed by necessary implication of the testator's intention, to take a fee-simple

See 2 Minor 909-70 and cases cited.

In Cole vs. Cole et als. 79 Va. 251, the Court says, "In the construction of wills it is a well settled rule of law that an absolute power of disposal by the first taker renders a subsequent limitation repugnant and void. And the same rule applies whether the property devised be real or personal." That case was very much like this in all its particulars, not only as to the language used in the devising and bequeathing clause, but as to the facts surrounding the parties at the date of the will, and at the death of the testator. Cole and his wife were childless, they had lived together as husband and wife for nearly forty years. Joseph N. Ely and his wife were childless, they had lived happily together as husband and wife for nearly fifty years, in this respect the two cases are parallel with each other. The evidence shows or tends to show that fully one half, if not more, of the property owned by Joseph Ely and his wife came by her, it further shows that she was indus-

trious, frugal and saving, and it is fair to say that she contributed her full share in the accumulation of the property owned by the two at the time of her husband's death. Not only does this similarity exist in the condition and circumstances surrounding the parties, but the language used in the two wills are very similar. In the Cole case the language was "I give to my wife Martha A.E. Cole all of my personal and real estate during her life time and at her death, half of the real estate and half of the personal property that may be on hands to do with as she may see proper, and the other half of my real and personal property to go to the heirs of my brother Sampson Cole". The language used in this will is "I desire and will all the remainder of what I am possessed at my decease both real and personal to Sarah S. Ely, my wife I desire that she shall have the sole use and control of it so long as she may live and after her decease and after all her just debts and funeral expenses~~are~~ are paid I then desire one-third of all my estate at that time both real and personal to be equally divided &c. In the case of Cole v. Cole the court said " The language employed is as if the testator had said, I give to my wife all my estate, and at her death one-half of the real estate and one half of the personalty that may then be on hand to go to the heirs of Sampson Cole. And the Court further said " the words 'that may be on hand' fairly construed impliedly give to the wife the absolute disposal of the personalty at least. And we may say with equal propriety that the words "all of my estate at that time both real and personal" implies all of the estate that may then be left, in other words that the testator gave to his wife the use and consumption of said property thus impliedly giving to her the absolute disposal of it. He expected her to use the property for her comforts and enjoyment, and his intention was to vest in her the right to use so much of it as was necessary even to the consumption of the whole of it. His first and principal object was to provide for his wife. This is manifested by the devise to her of his whole estate, and under the circumstances surrounding these two old people to have left her the use of only a part of the estate and to have

imposed upon her in her old age the care and responsibility of a trustee for the descendants of his brothers and sisters would not have been just and certainly it would have been anything else but generous, and it is evident from the language used by him that to her he intended to be both. We have ^{thus} freely used the Cole case because of the almost exact similarity in all respects of that case to this.

If we are mistaken in the conclusion that this construction of the will is ~~xxx~~ the true one, then we insist most vehemently that the second contention mentioned in the plaintiffs' bill is the true one. This contention, ~~even~~ taking the view that the language of the will creates only a life estate in the decedent Sarah S. Ely, is the only fair one that can be reached. It is the only just one that the language of the will will admit. Certainly the testator never intended and cannot be held to have intended to make a trustee, a servant or a financial manager out of his devoted wife for the benefit of his brothers and sisters, nor will the language used by him, giving to it the most favorable construction to the interest of his brothers and sisters or their descendants, admit of such a conclusion. All will admit that he gave her a life estate in all his property both real and personal. This carried with it by necessity the use ~~usufruct~~ of said property, everything that grew out of it or arose from it, not only the rents and profits of the real estate but likewise the interest on the notes and bonds and the yearly increase of the personalty of whatever kind. It is a well settled, that in any kind of conveyance whether for life or for a term of years, ~~that~~ such property as is consumed by use or in the using thereof, an absolute estate passes, it matters not what the words used may be. Now let's reason together for a moment. Did not, under this will, even conceding that a life estate was all that was intended, Sarah S. Ely take absolutely the right to the rents and profits of all the real estate owned by the testator at the time of his death? Did she not have the right to consume these rents, to sell them and convert them into money, and to use that money as she saw proper? All will readily admit that she had, that right, that these rents belonged absolutely to ~~her~~. Does not the same rule and the same reasoning apply

with equal force to the notes, bonds and other personal property on hands, if not why did he convey it to her, what was the use of giving her this personal property and this real estate for her life if she could not use and convert to her use in any way she saw proper the interest on the bonds, or the rents of the real estate. To enable her to thus use said rents and profits, the interest on said bonds and the increase of the personal property, implies an absolute estate. If the will only made her a trustee, she had no more right to use the increase of the property, the rents of the realty, the interest on the bonds ~~not~~ notes and other evidences of debt, than she would, to have used the corpus of said property. The idea that all the increase of that property belongs to the estate of Joseph N. Ely is destructive of every incident of a life estate. It destroys the very idea of the creation of a life estate. To take from a person what results or comes ^{from} into the life estate, takes away every benefit that arises from such an estate, and in place of generosity being bestowed a burden is imposed.

" Every tennant for life has a right to the full enjoyment of the land and all of its annual profits during the continuance of his estate

See 1 Lomax Digest page 32 & 43

1 Tucker com. Book 2, page 50

The same rule, only in a broader sense, applies to life estates in personal property. Then it follows conclusively that all the increase of the personal estate which Sarah S. Ely received from her husband, even admitting, which we do not do, that she only got a life estate in said personalty, belonged absolutely to her, and belonging to her it descends to her heirs, free from any claim or right in his heirs.

For the year 1882, the year that Joseph Ely died, his personal property was assessed at \$4848.00. For the year 1899, the last year in which Sarah S. Ely was assessed before her death, her personal property was assessed at \$8985.00, to which might properly be added \$335.00 the price she paid for the eleven acres of land purchased from John P. Hughes and wife, thus showing that the personal property as ascertained by its assessed value in each case, had increased, or in other words that she had made \$4963.00. This assessed value in each instance is very nearly the actual value, as it consisted mostly of money, notes

and bonds which are always assessed at their actual value, the evidence showing that of the personal property assessed to Joseph Ely for the year 1882, \$4251.00 was for notes and bonds and only \$597 for other personal property, while the bill alleges that the full valuation of the personal property of Sarah S. Ely, including notes, bonds choses in action &c. is \$10253.17 as ascertained by her administrators. It thus appears that fully one-half of the personal estate has been made by Sarah S. Ely by her industry, energy and frugality since the death of her husband.

In our view of this case there is no possible way in which the first contention mentioned by the plaintiffs in their bill can have a place. It ^{is} too strongly contradictory of the terms of the will itself, it is too strongly opposed to common sense, reason and fair dealing to even have a serious advocate unless that advocate ~~was~~ prejudiced by his interest. Joseph N. Ely loved his wife too well, she had been too long the partner of his joys and his sorrows for him to have imposed upon her the duty, the responsibility, the hardship and slavery of a trustee for the benefit of the descendant of his brothers and sisters.

C. T. Duncan
J. C. Hall
For the defendants
where they filed answer

John 3rd July 1862

to 2 Brief of

to 2 Brief of

to 2 Brief of

to 2 Brief of

to 2 Brief of

John Z.Ely & J.M.Smyth Admrs. etc.

Vs.

Elizabeth J.Pennington et als.

The decree in this case directs Commissioner Goins to ascertain what real estate was owned by Joseph N.Ely at the time of his death, its nature and location and whether or not it all remains in kind, and if not, the value of such as has been disposed of as of the date of its disposal; of what personal property the said Ely died possessed of all kinds and descriptions, its nature and value as of the time of the death of the said Ely; the increment, if any, to the estate so left by the said Joseph N.Ely in the hands of his wife Sarah S.Ely, stated as of the time of her death and the nature thereof.

The enquiries in this case are few and simple. The Deed Books furnish evidence of the real estate owned by the said Ely at the time of his death, and the reference to them is all that is necessary on the first enquiry.

There is no evidence that the said Joseph N.Ely owned any personal property at the time of his death, except the evidence furnished by the defendants, heirs of Sarah S.Ely deceased. This evidence shows that Joseph N.Ely shortly before his death owned four horses of the value of \$250.00, eight cattle of the value of \$135.00, six sheep of the value of \$6.00, 19 hogs of the value of \$50.00, one wagon of the value of \$35.00, farming utensils of the value of \$25.00, one clock of the value of \$2.00, sewing machine of the value of \$20.00, household and kitchen furniture of the value of \$100.00, one gun of the value of \$4.00, making a total of \$597.00; solvent bonds, claims and evidences of debt of the value of \$4251.00, or a grand total of personal property of \$4848.00. The next year after the death of the said Joseph N.Ely, Sarah S.Ely is charged with personal property aggregating \$530.00, solvent notes, bonds &c \$4910.00 making a grand total of \$5440.00. Without this evidence adduced by said defendants, the Pennington heirs there would be no evidence to show that Joseph N.Ely owned any personal property at the time of his death.

The third and last enquiry which the Commissioner is directed

to make, is to ascertain the ~~interest~~ increment to the estate left by Joseph N. Ely in the hands of his wife Sarah S. Ely, stated as of the time of her death, and the nature thereof. This a matter very easy of ascertainment. The sale bill of the personal property of Sarah S. Ely, together with the notes, accounts and evidences of debt regarded as solvent amounts to \$10,352.17. Deduct from this amount the value of the personal property belonging to the estate of Joseph N. Ely at the time of his death as shown by the testimony of said defendants above referred to, gives you the increase of said estate which the Court by its decree has determined to belong to the heirs of the said Sarah S. Ely deceased.

XXX

All the property in the possession of Sarah S. Ely, in the absence of proof to the contrary, is presumed, in law, to be hers. This presumption rests upon the well known principle of law, "That possession of personal property is the highest evidence of the ownership thereof".

The heirs of Sarah S. Ely might rest here and be content, knowing that until the Ely heirs had proven what property belonged to Joseph N. Ely at the time of his death, all property in the possession of Sarah S. Ely, at the time of her death, of a personal nature, must be held to belong to her estate. But they have not chosen to do so. They have chosen rather to aid the commissioner all they could in determining the second enquiry which the court directs to him. For this purpose they introduced the books of the Commissioner of the Revenue for Lee County for the last year of the life of Joseph N. Ely, deceased and for the first year in which the said Sarah S. Ely was assessed with taxes. The question now arises, were and are these books competent evidence. If not, why not? Section 3334 Code of Virginia makes a copy of any record or paper in the Clerk's Office or the Office of the Secretary of the Commonwealth &c. evidence in lieu of the original. Would the originals in this case be evidence? To determine this it is only necessary to enquire whether or not they are pertinent to the issue. See 1 Greenleaf Evidence, §§. 491 - 493; 4 Min. Inst. Pt. 1 page 725. What is the enquiry? What personal property was owned by Joseph N. Ely

at the time of his death and the value thereof. The law requires, and required in 1882, that all personal property, not exempt from taxation and all subjects of taxation, should be ascertained by the Commissioner of the Revenue of the several Districts of the County, and in order to do this, it was and is made the duty of the Commissioner of the Revenue to call upon every person in his County, District &c. to furnish a list of such property, money, credits or other subjects of taxation as required by law and the value thereof. This information was and is required to be furnished under oath, See Sec. 491, C.V. 1887.

Then it was the duty of Joseph N. Ely in the year 1882 to furnish to the Commissioner of the Revenue a correct list of all the personal property owned by him subject to taxation together with the true value thereof. The law presumes that he performed his duty in this respect correctly, that he furnished to the Commissioner of the Revenue a list of his personal property together with the true value thereof. Certainly this list thus made by him is the prima facie amount and value of the property owned by him and must stand as the value until it shown to be incorrect.

Now as to the \$300.00 fixed by the Commissioners as due compensation for the land taken by the Louisville & Nashville Railroad Co. for its purposes, the rights and ownership of the same has been determined by a court of competent jurisdiction. After said compensation had been fixed by the Commissioners appointed for that purpose, the Court appointed a commissioner to ascertain who was entitled to said money. Said commissioner made his report after having given the notice required by law. After quoting in his report the terms of the will of Joseph N. Ely applicable to the enquiry required to be made by him, he proceeds to say, "Now with these facts before your commissioner he is of opinion that the terms expressed in said will are so sole and absolute as to be construed as an absolute title in Sarah S. Ely to said land during her life for any and all purposes for which she should use them and therefore determines that Sarah S. Ely is alone entitled to said damages of \$300.00." This report of said Commissioner was approved and confirmed by the County Court of this County on the 9th day of April

1890. It follows then that the ownership of this money has been determined by a Court of Competent jurisdiction and whether correctly or incorrectly determined is not now a matter of enquiry in a collateral proceeding. The only way to get rid of that judgment is by appeal.

Very Respectfully Submitted.

C. T. Duncan.
J. C. Paul
Atty.

Eoly & Luythe Adm
rs- by Bruf of Punington
Luis.
Sarah J Punington it as

Before Court

J. Morrison Smyth and J. Z. Ely Admrs. &c

Vs.

Elizabeth Pennington et als.

The defendants, the heirs of Sarah S. Ely deceased excepts to much of the report of A. M. Goins Special Commissioner in said cause as charges the said Sarah S. Ely with \$300.00 the amount of money paid to her by the Louisville & Nashville Railroad Company, because the ownership of said money has been heretofore determined by a Court of competent jurisdiction upon proceedings regularly had, to be the property of the said Sarah S. Ely, and that no appeal has been taken from the same.

Second; because said commissioner has left out of his calculation the interest on the various notes bonds and other evidences of debt held by Sarah S. Ely at the time of her death, all of which said interest belongs to her estate.

C. F. Duncan
J. C. Noel

And said report ~~is~~ to statement
No 2. is ~~accepted~~ to ~~insert~~ to ~~as~~ ~~there~~
is ~~no~~ ~~other~~ ~~evidence~~ ~~or~~ ~~can~~ ~~to~~ ~~sustain~~
the same

Duncan & Noel
for D & Ely the
Pennington heirs

And said report is further accepted to
be ~~an~~ ~~error~~. The same does not give Sarah
S Ely credit for the William Pennington
note which is shown to be a note of
Jas & Ely. ~~shall~~

Duncan & Noel for
D & Ely.

J.M.Smyth & J.Z.Ely, Admr. &c.

Vs. } Exceptions to Comr's. r
Report.

Elizabeth Pennington et al.

Lee Circuit Court

John Z. Ely and John M. Smythe, Admrs.

Vs.

EXCEPTIONS TO COMMISSIONER'S REPORT:

Elizabeth J. Pennington, et al.

The undersigned except to report filed herein by A. M. Goins, Commr., on October 3rd, 1900, for the following reasons

First: Because said commissioner accepts as prime facie evidence of the amount of personal property of which Jos. N. Ely died possessed the books of the commissioner of the revenue for the year 1883. The said books on this point are not even prime facie evidence of the value of such property, and are not admissible for any purpose in this investigation. (5 L.R.A. 525).

Second: Because said commissioner after ascertaining the total estate of the said Jos. N. Ely as \$5,967, which is approximately the same as the assessed value thereof for the year 1883, deducts this from the sale ^{on time} of \$10,252 and gives the difference \$4,285 as the increment to the estate of Sarah S. Ely. The evidence is not sufficient upon which to base any report as to the value of the property left by Jos. N. Ely, and the commissioner should so have reported, and should have reported, therefore, that it is not possible to ascertain what increment, if any, belongs to the estate of Sarah S. Ely. The burden is upon the heirs of Sarah S. Ely to prove what such increment, if any, is, and to do so by proper and legal testimony. They have failed to adduce such testimony and to carry the burden imposed on them by law.

Third: Because said commissioner after adopting the

commissioner's assessment books for 1883 as the basis of the property left by Jos. N. Ely adopts the sale bill as the basis of that left by Sarah S. Ely, when the proper way to arrive at the alleged increment ^{if the assessment is legal evidence} would be to adopt as the basis of the property left by Sarah S. Ely the assessment books of 1900 and give the estate of Jos. N. Ely the benefit of the difference between the assessment of 1900 and the said sale bill.

Orr & Irvine - and -
Pennington Bros.

on behalf of the defendants for whom they have answered in this cause.

Calculations of

J. P. Eley's pecunies
vs. the estate of A. J. Eley in
the case of Smyth & Eley admors
vs. E. J. Pennington et al
Dec deems of June 3rd 1901.

Note due 10/11/1888	5	50
Int. to 6/11/1901	3	80
Note due 10/11/1889	25	00
Int. to 6/11/1901	17	50
Costs taxed	12	30
Total Receivables	\$63	60
lev. by Eley & Smyth admors	33	60
	\$30	00
lev. by Hall & Pennington admors	30	00

L. P. Ealy

vs { Calculations

a. J. Ealy hires

In the Clerk's Office of the Circuit Court of the County of
Lee on the 3rd day of April 1901.

against

J. P. Ely

Plaintiff

Sarah Smyth, Minerva Bowen, Lyde Turner, Hiram
Ely, George Ann Ely and Jackson Ely Defendant^s

On Petition filed
in Chancery Cause
of Ely & Smyth, Admrs
vs
E. J. Pennington et al

The object of this ~~suit~~ ^{Petition} is to recover of the estate of A. J. Ely deceased of
whom the said defendants are heirs, the sum of \$30.00
due by notes, with interest on \$25.00 part thereof, from
the 1st day of Oct, 1889. & on \$5.00 the remainder thereof
from the 10th day of Oct, 1888 till paid & to have said
debt paid out of the estate of Joseph Ely deceased, in the
hands of the Court in this Cause, part of which belongs
to the estate of A. J. Ely

And an affidavit having been made and filed that the defendant^s Sarah Smyth, Minerva Bowen
Lyde Turner, George Ann Ely, Hiram Ely and Jackson Ely are
not residents of the State of Virginia, it is ordered that They do appear here within fifteen days
after due publication hereof, and do what may be necessary to protect their interest in this suit. And
it is further ordered that a copy hereof be published once a week for four weeks in the South-West
Virginian, and that a copy be posted at the front door of the court-house of this County
on the first day of the next term of the County Court.

A copy—Teste:

Pennington Bros p. q.

A. B. Munsey Clerk.

J. P. Ely

vs. {

ORDER OF
PUBLICATION.

Sarah Smyth et als

Virginia Lee County Court.
 I A. B. Munsey Clerk of
 the Circuit Court for
 Lee County do hereby
 Certify that I posted
 a copy of the within
 order of Publication
 at the front door of
 the Court house of Lee
 County on the first day
 of the ^{3rd} term of the County Court of
 said County ~~at the~~
 at the April term 1901
 Issued under my
 hand this the 3rd day
 of June 1901.

A. B. Munsey Clerk

Pennington Gap, Va. Sept. 6/1901,
The parties in the suits of
Smyth & Ely admors. &c vs. E. J.
Pennington et al, and John F. and
Mary P. Ely vs. J. M. Smyth et al
and now depending in the Cir.
Court for the County, Va., will take
notice, that on the 23rd day of
Sept., 1901, and succeeding days
if necessary, at my office in
the town of Pennington Gap, Va., I
will proceed to execute the decree
rendered in said causes on the 7th day
of March, 1901, when and where
they are required to attend with
such books, papers, vouchers and
evidence as will enable me to
comply with the said order of
the Court.

E. H. Pennington
Special Comm.

We hereby accept legal service
of the within for John Z. Ely and
J. M. Smyth et al. Sept. 6th 1901.
Perrington Bros.

We hereby accept legal service
of the within notice for America
Graham, John S. Perrington et al.
This Sept 7 1901.

L. T. Duncanson & J. C. Noel

In the Clerk's Office of the Circuit Court for the county of Lee,
on the 24th day of April, 1800.

J. Morison Smyth and John Z. Ely Administrators of the estate:	Plaintiffs, :
of Sarah S. Ely deceased,	: In Chancery
against	:
Elizabeth J. Pennington, et al.,	Defendants. :
	:

The object of this suit is to construe the will of the late Joseph N. Ely and to determine to whom the plaintiffs as administrators of the estate of the said Sarah S. Ely decd., should pay the funds in their hands which was devised to the said Sarah S. Ely by the will of Joseph N. Ely, or acquired by the said Sarah S. Ely in any other way which has come or may come into the hands of said Adms., and to have a commissioner ascertain the amount to which each of the parties in interest are entitled. And an affidavit having been made and filed that the defendants

Elizabeth J. Pennington, Sallie Trent, John M. Smyth, Alexander Smyth, Tennessee Smyth, Mary F. Parsons, Manervie O. Bartlett, Sarah M. Greenwood, Mary A. Cary, Laura R. Parsons, William Smyth, Sarah Cole, Joseph I. Smyth, Sarah J. Parsons, Sallie Turner, Fannie Lewis, Lou Anna Caywood, Jane Farley, Louisa King, Rachel Doss, Emily Maupin, Bettie Crider, Grant Sargeant, Mary Caywood, Jackson Johnson, Sarah Collier, Emily Turner, Vesta Boothe, Gola Johnson, Cora Johnson, James M. Smyth, Cora Smyth, Jackson Smyth, David Smyth, Joseph Branson, Henry Branson, Sampson Branson, Richard Branson, Louisa Colley, Rebecca Maloney, P. C. Flanary, Francis Maxwell, Elizabeth Parsons, Susan Parsons, Jasper Parsons, Newton Parsons, Fannie Collier, Isaac Ely, John Ely, Hiram Ely, Sarah Smyth, Manervia Bowen, Lyde Turner, Georgia Ann Ely, Hiram Ely, Jackson Ely, Emily Munsey, Eileen Fletcher, Emory Gilly, Cynthia Myers, Thomas Garrison, Daniel G. Simpson, Manervia Humphrey, Rebecca Barron, John Reasor, Peter Reasor, Fannie Reasor, Bell Reasor, and Cass Reasor are not residents of the State of Virginia; and a further affidavit having been filed that there are or may be other persons interested in said suit but whose names are unknown, and who are the heirs of William Smyth deceased, Amanda Howard deceased, Chandler Branson deceased, Fannie Howard deceased, Nimrod Branson deceased, Barbary Parsons deceased, Oma Hobbs deceased, Emily Moor deceased, Laura Harber deceased and

Elkanah Ely deceased, it is ordered that they do appear here within 15 days after due publication hereof and do what may be necessary to protect their interest in this suit. And it is further ordered that a copy hereof be published once a week for four weeks in the Southwest Virginian, and that a copy be posted at the front door of the court house of this county on the first day of the next term of the county court.

A copy teste:

Rebecca Maloney P. Q. A. B. Munsey clerk

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting :

WE COMMAND YOU THAT YOU SUMMON E. G. Parsons

A. M. Gouin Court at his office in the town of Jonesville Va
to appear, before the Judge of our Circuit Court of the County of Lee, at the court-house
thereof, on the 13th day of September 1900 ~~189~~, to testify and the truth to say
in behalf of the Plaintiffs, in a certain matter of controversy in our said court
before the said Judge depending and undetermined between J. Morrison Smyth &
John J. Ely Admins of the estate of Joseph Ely decd Plaintiff, and

Elizabeth J. Pennington et als, Defendant &. And this he
shall in no wise omit, under the penalty of £100. And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said court, at the court-house the 13th day of
September 1900 ~~189~~, and in the 125th year of the Commonwealth.

A B Munsey Clerk

admrs.
J. Morrison Smith et als

vs.

SUBPOENA
 FOR
 WITNESS.

Elizabeth J. Pennington et als

/

Court,

the *13th* day of *Sept* 1900

~~189~~

Witnessed at
13th day of Sept
at 10 o'clock
at 10 o'clock
the 13th
at 10 o'clock

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting;

WE COMMAND YOU, That you summon Elizabeth J. Pennington, Sallie Trent, John M. Smyth, Alexander Smyth, Tennessee Smyth, Rebecca J. Travis, J. T. Smyth, Mary F. Parsons, Nervie O. Bartlett, Wm. Smyth, Martha Quillen, Emily Lucas, Sarah Tharp, Sarah M. Greenwood, John M. Smyth, Jr., James D. Smyth, Elbert M. Smyth, Mary J. Parsons, Mary A. Cary, David W. Smyth, Donie E. Olinger, Charles Smyth, Laura R. Parsons, Luther S. Turner, Wm. E. Turner, Wm. Smyth, Sarah Cole, Joseph L. Smyth, unknown heirs of Amanda Howard deceased, Sarah J. Parsons, John A. Orr, W. T. Orr, Emily Newman, Peter H. Orr, Dollie Pugh, Sallie Turner, Fannie Lewis, Louannie Caywood, Jane Farley, Louisa King, Rachel Doss, Emily Maupin, Bettie Crider, Grant Sargeant, Mary Caywood, T. P. Smith, Sarah E. Cooney, Mary Carter, Joseph Johnson, John Johnson, Jackson Johnson, Mary Robbins, Sarah Collier, Emily Turner, Vesta Boothe, Gola Johnson, Cora Johnson, Fannie Johnson, Mollie Hughes, Rebecca Johnson, Johnson, Tennessee Smyth, Rebecca Olinger, America Bailey, Emmet Smyth, Fannie Smyth, Flora Smyth, Joseph Smyth, Jas. M. Smyth, Cora Smyth, Jackson Smyth, David Smyth, Emmet Short, Sherman Parsons, George Parsons, Mary Doss, Sarah Mullins, Joseph Branson, Henry Branson, Sampson Branson, Sallie Parsons, Richard Branson, Louisa Colley, the unknown heirs of Chandler Branson deceased, the unknown heirs of Fannie Howard deceased, the unknown heirs of Nimrod Branson deed., Loucinda Parsons, Rebecca Maloney, H. C. Bailey, John M. Bailey, Sallie Cecil, Jane Barker, Lettie Shufflebarger, P. C. Flanary, Francis Maxwell, Elizabeth Parsons, Susan Parsons, Jasper Parsons, Newton Parsons, D. S. Reasor, Jackson Reasor, Wallace Reasor, J. Green Reasor, Amanda Olinger, the unknown heirs of Oma Hobbs deceased, Fannie Collier, J. Porter Ely, Isaac Ely, John Ely, George Ely, H. H. Ely, J. E. Smith, Floyd Stewart, James A. Stewart, Simpson Stewart, Lillie Stewart, Emmet Stewart, Ballard Stewart, Laura Stewart, the unknown heirs of Emily Moore deceased, I. P. Ely, W. S. Ely, Hiram Ely, Amanda Ely, John B. Ely, Charles Ely, Leonard Ely, Maud Ely, Sarah Ely, Dora Ely, Crockett Ely, Hiram Ely, the unknown heirs of Laura Harber deceased, the unknown heirs of Elkanah Ely deceased, Sarah Smyth, Minerva Bowen, Lyde Turner, Georgia Ann Ely, Hiram Ely, Jackson Ely, Emmet Ely, D. R. Ely, Rosa Robbins, Octa Smith, Marion Ely, Palestine Ely, Rebecca Weston, Emily Muncy, Eva Fletcher, Susan Young, John M. Howard, Eva J. Skaggs, Octa E. Johnson, Emory Gilley, Cornie Parks, Creed Gilley, Annis Litton, Tip Gilley, Gale Gilley, Rebecca Cecil, Mary Cox, C. D. Bailey, Amanda Hughes, Sarah Myers, America Graham, Mary P. Ely, Cynthia Myers, John H. Pennington, Sarah E. Myers, Thomas Garrison, Daniel G. Simpson, Minerva Humphrey, Rebecca Barron, John Reasor, Peter Reasor, Fannie Reasor, Bell Reasor, Cass Reasor, John Z. Ely, *Nancy Stanley*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for said Court, on the 3rd Monday in May, 1900, to answer a bill in Chancery exhibited against them in our said Court by John Z. Ely and J. Morison Smyth Administrators of the estate of Sallie S. Ely deceased.

And have then there this writ. Witness A. B. MUNSEY Clerk of our said Court, at the Court-house, the 23rd day of April, 1900, and in the 124th year of the Commonwealth.

A. B. Munsey CLERK.

John & Ely & Mary P Ely

Virginia Lee County to-wit

This day personally appeared before me A.B. Munsey Clerk of the Circuit Court James Myes and made oath that he on the 19th day of May 1900 delivered an attested office copy of the within Spa in Chay to Rebecca Weston & Sarah Cooney.

Given under my hand this the 4th day of June 1900.

A.B. Munsey Clerk

Executed may the 15th 1900
by delivering an attested office
copy of the within Spa in Chay
to Anna Smith & Rebecca Myers.
At J. M. Lehman & Co.

CERTIFICATE OF
ORDER OF PUBLICATION.

I, A. M. Goins, Editor of the SOUTH-
WEST VIRGINIAN, a weekly newspa-
per published at Jonesville, Lee County,
Va., do hereby certify that the annex-
ed notice was published in said paper
once a week for four successive weeks,
commencing on the *11th* day of

April, 1901.

A. M. Goins, EDITOR.

FEE, *\$8.00*

Order Of Publication.

VIRGINIA—In the Clerk's Office of the
Circuit Court of the County of Lee on
the 3rd day of April, 1901.

I. P. ELY, Plaintiff,
against

Sarah Smyth, Minerva Bowen, Lyde
Turner, Hiram Ely, George Ann
Ely and Jackson Ely, Defendants.

[On petition filed in chancery cause of
Ely & Smith admrs. vs. E. J.
Pennington et als.]

The object of this petition is to recover
of the estate of A. J. Ely deceased of
whom the said defendants are heirs, the
sum of \$30.00 due by notes, with interest
on \$25, part thereof, from the 1st day of
October, 1889, till paid, and on \$5, the re-
mainder thereof, from the 10th day of Oct.
1883, till paid, and to have said debt paid
out of the estate of Joseph Ely deceased
in the hands of the court in this cause part
of which belongs to the estate of the said
A. J. Ely.

And an affidavit having been made and
filed that the defendants Sarah Smyth,
Minerva Bowen, Lyde Turner, George Ann
Ely, Hiram Ely and Jackson Ely are not
residents of the State of
Virginia, it is ordered that they do appear
here within fifteen days after due publica-
tion hereof, and do what may be necessary
to protect their interest in this suit. And
it is further ordered that a copy hereof be
published once a week for four weeks in
the Southwest Virginian, and that a copy
be posted at the front door of the court-
house of this County on the first day of the
next term of the County Court.

A copy—Teste:

A. B. MUNSEY, Clerk.

Pennington Bros, p. q.

Apr114t01

ORDER OF PUBLICATION.

J. P. Ely, Plff.

VS.

IN CHANCERY.

Sarah Smith et al., Defs

FEE

\$8 00

**CERTIFICATE OF
ORDER OF PUBLICATION.**

I, A. M. Goins, Editor of the **SOUTH-WEST VIRGINIAN**, a weekly newspaper published at Jonesville, Lee County, Va., do hereby certify that the annexed notice was published in said paper once a week for four successive weeks, commencing on the 26th day of April, 1900.
A. M. Goins, EDITOR.

FEE \$14.80

VIRGINIA—In the Clerk's Office of the Circuit Court of the County of Lee on the 24th day of April, 1900.

J. Morison Smyth and John Z. Ely,
Administrators of the Estate of
Sarah S. Ely, deceased, Plaintiffs.

against

Elizabeth J. Pennington, et al., D'f'ts.

IN CHANCERY.

The object of this suit is to construe the will of the late Joseph N. Ely and to determine to whom the plaintiffs as administrators of the estate of the said Sarah S. Ely, decd., should pay the funds in their hands which was devised to the said Sarah S. Ely by the will of Joseph N. Ely, or acquired by the said Sarah S. Ely in any other way, which has come or may come into the hands of said Admr's., and to have a commissioner ascertain the amount to which each of the parties in interest are entitled.

And an affidavit having been made and filed that the defendants, Elizabeth J. Pennington, Sallie Trent, John M. Smyth, Alexander Smyth, Tennessee Smyth, May F. Parsons, Minerva O. Bartlet, Sarah M. Greenwood, Mary A. Cary, Laura R. Parsons, Sallie Turner, Fannie Lewis, Lou Anna Caywood, Jane Farley, Louisa King, Rachel Doss, Emily Maupin, Bettie Crider Grant Sargeant, Mary Caywood, Jackson Johnson, Sarah Collier, Emily Turner, Vesta Boothe, Gola Johnson, Cora Johnson, James M. Smyth, Cora Smyth, Jackson Smyth, David Smyth, Joseph Branson Henry Branson, Sampson Branson, Richard Branson, Louisa Colley, Rebecca Maloney, P. C. Flanary, Francis Maxwell, William Smyth, Sarah Cole, Jos. I. Smyth, Sarah J. Parsons,

Elizabeth Parsons, Susan Parsons, Jasper Parsons, Newton Parsons, Fannie Collier, Isaac Ely, John Ely, Hiram Ely, Sarah Smyth, Manervia Bowen, Lyde Turner, Georgia Ann Ely, Hiram Ely, Jackson Ely, Emily Munsey, Eviline Fletcher, Emory Gilly, Cynthia Myers, Thomas Garrison, Daniel G. Simpson, Manervia Humphrey, Rebecca Barron, John Reasor, Peter Reasor, Fannie Reasor, Bell Reasor, and Cass Reasor not residents of the State of Virginia; and a further affidavit having been filed that there are or may be other persons interested in said suit but whose names are unknown, and who are the heirs of William Smyth, deceased, Amanda Howard deceased, Chandler Branson deceased, Fannie Howard deceased, Nimrod Branson deceased, Barbary Parsons deceased, Oma Hobbs deceased, Emily Moore decd., Laura Harber decd. and Elcanah Ely decd. it is ordred that they do appear here within fifteen days after due publication hereof and do what may be necessary to protect their interest in this suit. And it is further ordered that a copy hereof, be published once a week for four weeks in the South-west Virginian, and that a copy be posted at the front door of the court-house of this county on the first day of the next term of the County Court.

A copy—Teste:

A. B. MUNSEY, Clerk.

Pennington Bros. p. q.

4-26-00-4t

ORDER OF PUBLICATION.

J. Morrison Smith & John Z Ely, Attorneys

VS.

IN CHANCERY.

Elizabeth J Pennington et al

FEE \$14.80

*The Commonwealth of Virginia,
To the Sheriff of the County of Lee, Greeting;*

WE COMMAND YOU, That you summon Elizabeth J. Pennington, Sallie Trent, John M. Smyth, Alexander Smyth, Tennessee Smyth, Rebecca J. Travis, J. T. Smyth, Mary F. Parsons, Nervie O. Bartlett, Wm. Smyth, Martha Quillen, Emily Lucas, Sarah Tharp, Sarah M. Greenwood, John M. Smyth, Jr., James D. Smyth, Elbert M. Smyth, Mary J. Parsons, Mary A. Cary, David W. Smyth, Donie E. Olinger, Charles Smyth, Laura R. Parsons, Luther S. Turner, Wm. E. Turner, Wm. Smyth, Sarah Cole, Joseph L. Smyth, unknown heirs of Amanda Howard deceased, Sarah J. Parsons, John A. Orr, W. T. Orr, Emily Newman, Peter H. Orr, Dollie Pugh, Sallie Turner, Fannie Lewis, Louannie Caywood, Jane Farley, Louisa King, Rachel Doss, Emily Maupin, Bettie Orider, Grant Sargeant, Mary Caywood, T. P. Smith, Sarah E. Cooney, Mary Carter, Joseph Johnson, John Johnson, Jackson Johnson, Mary Robbins, Sarah Collier, Emily Turner, Vesta Bootlie, Gola Johnson, Cora Johnson, Fannie Johnson, Mollie Hughes, Rebecca Johnson, Johnson, Tennessee Smyth, Rebecca Ohnger, America Bailey, Emmet Smyth, Fannie Smyth, Flora Smyth, Joseph Smyth, Jas. M. Smyth, Cora Smyth, Jackson Smyth, David Smyth, Emmet Short, Sherman Parsons, George Parsons, Mary Doss, Sarah Mullins, Joseph Branson, Henry Branson, Sampson Branson, Sallie Parsons, Richard Branson, Louisa Colley, the unknown heirs of Chandler Branson deceased, the unknown heirs of Fannie Howard deceased, the unknown heirs of Nimrod Branson decd., Loucinda Parsons, Rebecca Maloney, H. C. Bailey, John M. Bailey, Sallie Cecil, Jane Barker, Lettie Shufflebarger, P. C. Flanary, Francis Maxwell, Elizabeth Parsons, Susan Parsons, Jasper Parsons, Newton Parsons, D. S. Reasor, Jackson Reasor, Wallace Reasor, J. Green Reasor, Amanda Olinger, the unknown heirs of Oma Hobbs deceased, Fannie Collier, J. Porter Ely, Isaac Ely, John Ely, George Ely, H. H. Ely, J. E. Smith, Floyd Stewart, James A. Stewart, Simpson Stewart, Lillie Stewart, Emmet Stewart, Ballard Stewart, Laura Stewart, the unknown heirs of Emily Moore deceased, I. P. Ely, W. S. Ely, Hiram Ely, Amanda Ely, John B. Ely, Charles Ely, Leonard Ely, Maud Ely, Sarah Ely, Dora Ely, Crockett Ely, Hiram Ely, the unknown heirs of Laura Harber deceased, the unknown heirs of Elkanah Ely deceased, Sarah Smyth, Minerva Bowen, Lyde Turner, Georgia Ann Ely, Hiram Ely, Jackson Ely, Emmet Ely, D. R. Ely, Rosa Robbins, Octa Smith, Marion Ely, Palestine Ely, Rebecca Weston, Emily Muncy, Eva Fletcher, Susan Young, John M. Howard, Eva J. Skaggs, Octa E. Johnson, Emory Gilley, Cornie Parks, Creed Gilley, Annis Litton, Tip Gilley, Gale Gilley, Rebecca Cecil, Mary Cox, C. D. Bailey, Amanda Hughes, Sarah Myers, America Graham, Mary P. Ely, Cynthia Myers, John H. Pennington, Sarah E. Myers, Thomas Garrison, Daniel G. Simpson, Minerva Humphrey, Rebecca Barron, John Reasor, Peter Reasor, Fannie Reasor, Bell Reasor, Cass Reasor, J. Morison Smyth, + *Harvey Stanley*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for said Court, on the 3rd Monday in May, 1900, to answer a bill in Chancery exhibited against them in our said Court by John Z. Ely and Mary P. Ely, Plaintiffs.

And have then there this writ. Witness A. B. MUNSEY Clerk of our said Court, at the Court-house, the 3rd day of April, 1900, and in the 124th year of the Commonwealth.

A. B. Munsey CLERK.

J. Z. Ely & J. Morrison ^{Admr} Smith

Virginia Lee County to-wit;
This day personally appeared before
me A. B. Munsey ^{James Myers} Clerk of the Circuit
Court for Lee County, and made oath
that he delivered a copy of the within
Spec in Chancery to Rebecca Weston
& Sarah Cooney on the 19th day of
May 1900.

Given under my hand this the 24th
day of June 1900. A. B. Munsey Clerk

Executed May the 15th 1900
by Delivering a copy of the
with in Spec in Chancery to
Mr. Smith & Rebecca J. Traves.
W. J. Mileham J. L. C.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon Elizabeth J. Pennington, Sallie Trent, John M. Smyth, Alexander Smyth, Tennessee Smyth, Rebecca J. Travis, J. T. Smyth, Mary F. Parsons, Nervie O. Bartlett, Wm. Smyth, Martha Quillen, Emily Lucas, Sarah Tharp, Sarah M. Greenwood, John M. Smyth, Jr., James D. Smyth, Elbert M. Smyth, Mary J. Parsons, Mary A. Cary, David W. Smyth, Donie E. Olinger, Charles Smyth, Laura R. Parsons, Luther S. Turner, Wm. E. Turner, Wm. Smyth, Sarah Cole, Joseph L. Smyth, unknown heirs of Amanda Howard deceased, Sarah J. Parsons, John A. Orr W. T. Orr, Emily Newman, Peter H. Orr, Dollie Pugh, Sallie Turner, Fannie Lewis, Louannie Caywood, Jane Farley, Louisa King, Rachel Doss, Emily Maupin, Bettie Crider, Grant Sargeant, Mary Caywood, T. P. Smith, Sarah E. Cooney, Mary Carter, Joseph Johnson, John Johnson, Jackson Johnson, Mary Robbins, Sarah Collier, Emily Turner, Vesta Boothe, Gola Johnson, Cora Johnson, Fannie Johnson, Mollie Hughes, Rebecca Johnson, Johnson, Tennessee Smyth, Rebecca Olinger, America Bailey, Emmet Smyth, Fannie Smyth, Flora Smyth, Joseph Smyth, Jas. M. Smyth Cora Smyth, Jackson Smyth, David Smyth, Emmet Short, Sherman Parsons, George Parsons, Mary Doss, Sarah Mullins, Joseph Branson, Henry Branson, Sampson Branson, Sallie Parsons, Richard Branson, Louisa Colley, the unknown heirs of Chandler Branson deceased, the unknown heirs of Fannie Howard deceased, the unknown heirs of Nimrod Branson decd., Loucinda Parsons, Rebecca Maloney, H. C. Bailey, John M. Bailey, Sallie Cecil, Jane Barker, Lettie Shuffebarger, P. C. Flanary, Francis Maxwell Elizabeth Parsons, Susan Parsons, Jasper Parsons, Newton Parsons, D. S. Reasor, Jackson Reasor, Wallace Reasor, J. Green Reasor, Amanda Olinger, the unknown heirs of Oma Hobbs deceased, Fannie Collier, J. Porter Ely, Isaac Ely, John Ely, George Ely, H. H. Ely, J. E. Smith, Floyd Stewart, James A. Stewart, Simpson Stewart, Lillie Stewart, Emmet Stewart, Ballard Stewart, Laura Stewart, the unknown heirs of Emily Moore deceased, I. P. Ely, W. S. Ely, Hiram Ely, Amanda Ely, John B. Ely, Charles Ely, Leonard Ely, Maud Ely, Sarah Ely, Dora Ely, Crockett Ely, Hiram Ely, the unknown heirs of Laura Harber deceased, the unknown heirs of Elkanah Ely deceased, Sarah Smyth, Minerva Bowen, Lyde Turner, Georgia Ann Ely, Hiram Ely, Jackson Ely, Emmet Ely, D. R. Ely, Rosa Robbins, Octa Smith, Marion Ely, Palestine Ely, Rebecca Weston, Emily Muney, Eva Fletcher, Susan Young, John M. Howard, Eva J. Skaggs, Octa E. Johnson, Emory Gilley, Cornie Parks, Creed Gilley, Annis Litton, Tip Gilley, Gale Gilley, Rebecca Cecil, Mary Cox, C. D. Bailey, Amanda Hughes, Sarah Myers, America Graham, Mary P. Ely, Cynthia Myers, John H. Pennington, Sarah E. Myers, Thomas Garrison, Daniel G. Simpson, Minerva Humphrey, Rebecca Barron, John Reasor, Peter Reasor, Fannie Reasor, Bell Reasor, Cass Reasor, J. Morison Smyth, *Nancy Stanley*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for said Court, on the 3rd Monday in May, 1900, to answer a bill in Chancery exhibited against them in our said Court by John Z. Ely and Mary P. Ely, Plaintiffs.

And have then there this writ. Witness A. B. MUNSEY Clerk of our said Court, at the Court-house, the 23rd day of April, 1900, and in the 124th year of the Commonwealth.

A. B. Munsey

CLERK.

Executed on the 12th day of
May, 1900 by delivering three
copies of the within summons
to the following persons, to-wit:
J. S. Smith, Martha Quinn,
Emily Swann, Sarah Sharpe,
John M. Dwyer Jr., James S. Dwyer
Albert M. Dwyer, Mary J. Parsons
David M. Dwyer, Louis E. Clinger,
Charles Dwyer, John A. Orr, H. S. Orr
Emily Newman, Peter H. Orr, Sally
Pugh, J. S. Smith, Mary Carter,
Joseph Johnson, John Johnson,
Mary Robbins, Thomas Smith
Sarah Mullins Rebecca Clinger
America Bailey Lucinda Parsons
H. C. Bailey John M. Bailey L. D. Bailey
Sallie Cecil Jane Barker Lettie Shuffelbarger
D. S. Reaser Wallace Reaser Green Reaser
Jackson Reaser Amanda Clinger J. Porter Ely
George Ely H. H. Ely J. C. Smith Floyd
Stewart James A. Stewart Simon Stewart
Lilly Stewart W. S. Ely Niram Ely
Amanda Ely John D. Ely Charles Ely
Emmet Ely D. P. Ely Rosa Robbins Susan
Young Eva J. Shagg Ceta E. Johnston
Lornie Parks Creed Gilley Rebecca Cecil
Mary Cox John J. Ely Amanda Hughes
Sarah Myers America Graham
Mary P. Ely John H. Cunningham Sarah -
E. Myers Sallie Parsons Ceta Smith
Sarah Collier Francis Maxwell
J. Morison Smith by D. P. Ely Sept
for W. J. Mullen & L. C.

The Commonwealth of Virginia:

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon James Spangler
to appear at the law office of A. M. Loins,
in the town of Jonesville, Virginia, on Tuesday,
Sept. 11, 1900, to testify and the truth to say in a
certain suit in Chancery in the Circuit Court,
and now pending before me as Special Com-
missioner, in which John Z. Ely & J. M. Smythe, Adverses,
are plaintiffs, and Elizabeth J. Pennington et als, are
defendants

to appear before our County Court for the County of Lee at the court house, on the _____ day of _____

189 _____, to testify and the truth to say before the Grand Jury then to be in session.
And this ~~they~~^{he} shall in no wise omit, under the penalty of \$100. And have then there this writ.

Witness, S. V. E. RICHMOND, Clerk of our said County Court, this 11th day of Sept. 1900
in the 12th year of the Commonwealth.

A. M. Loins Clerk

Special Commissioner

SUBPOENA FOR WITNESSES

Before Special Court,
~~BEFORE GRAND JURY.~~

To 11th Day of Sept.

1800.

Executed Sept
11th 1900 by J. W. M.
in James Shepley
W. J. Milburn

20 cts

The Commonwealth of Virginia,

To the Sheriff of Lee County—Greeting:

WE COMMAND YOU, That you summon

Mrs. J. J. Ely, f

to

me at my office in Leesville, Lee County
to appear before the Judge of our County Court of Lee county, at the court-house, on
the *11* day of *September* 189*0*, to answer an indictment of the Grand Jury

made against ~~_____~~ on the ~~_____~~ day of ~~_____~~ 189*0*, for

~~to testify and the truth to speak~~ *before me*
~~a Special Commissioner of the Circuit Court of Lee County~~
in behalf of America Graham et al, in the case
of J. J. Ely and J. M. Smyth Admrs etc. vs Elizabeth
Pennington et al in reference to an account in
said case now being taken ~~before me, as said commissioner~~

And have then there this writ.

Witness, S. V. F. RICHMOND, Clerk of our said Court, at the court-house, this *Given under my*
hand this 10 day of Sept. - 1900
day of *1890*, in the *year* of the Commonwealth.

A. M. Lewis,
Special Commr,

Subpoena for Return
Commonwealth

Before

Spe. Co.

vs.

SUMMONS TO ANSWER

~~AN~~

INDICTMENT.

To Term

Court.

189.....

Executed by
10th by
ms. J. H. Key
W. J. Sullivan

20 cts

A copy teste:
Pennycott Bros. P.Q. A.B. Mursey clerk

CERTIFICATE OF
ORDER OF PUBLICATION.

I, A. M. Goins, Editor of the SOUTH-
WEST VIRGINIAN, a weekly newspa-
per published at Jonesville, Lee County,
Va., do hereby certify that the annex-
ed notice was published in said paper
once a week for four successive weeks,
commencing on the 26th day of

April, 1900.

A. M. Goins, EDITOR.

FEE, \$13.60

VIRGINIA—In the Clerk's Office of the
Circuit Court of the County of Lee on
the 24th day of April, 1900.

John Z. Ely and Mary P. Ely, Pl't's.
against

J. Morison Smyth et al, Defendants.

IN CHANCERY.

The object of this suit is to partition the
lands of Sarah S. Ely deceased and Joseph
N. Ely deceased, among the lawful heirs
of both said parties if practicable but if not
practicable to have the same sold accord-
ing to law and the proceeds of sale di-
vided between said heirs according to their
respective interest as shall be determined
by the court.

And an affidavit having been made and
filed that the defendants, Elizabeth J. Pen-
nington, Sallie Trent, John M. Smyth,
Alexander Smyth, Tennessee Smyth, Mary
F. Parsons, Manervia O. Bartlett, Sarah
M. Greenwood, Mory A. Cary, Laura R.
Parsons, William Smyth, Sarah Cole, Jos.
I. Smythe, Sarah J. Parsons, Sallie Turner
Fannie Lewis, Lou Anna Caywood, Jane
Farley, Louisa King, Rachel Doss, Emily
Maupin, Bettie Orider, Grant Sergeant,
Mary Caywood, Jackson Johnson, Sarah
Collier, Emily Turner, Vesta Boothe, Gola
Johnson, Cora Johnson, James M. Smyth,
Cora Smyth, Jackson Smyth, David Smyth
Joseph Branson, Henry Branson, Sampson
Branson, Richard Branson, Louisa Colley,
Rebecca Maloney, P. C. Flanary, Francis
Maxwell, Elizabeth Parsons, Susan Par-
sons, Jasper Parsons, Newton Parsons,
Fannie Collier, Isaac Ely, John Ely, Hi-
ram Ely, Sarah Smyth, Manervia Bowen,
Lyde Turner, Georgia Ann Ely, Hiram
Ely, Jackson Ely, Emily Munsey, Eviline
Fletcher, Emory Gilly, Cynthia Myers,
Thomas Garrison, Daniel G. Simpson, Ma-
nervia Humphrey, Rebecca Barron, John
Reasor, Peter Reasor, Fannie Reasor, Bell
Reasor, and Coss Reasor are not residents
of the State of Virginia; and a further
affidavit having been filed that there are
or may be other persons interested in said
suit but whose names are unknown, and
who are the heirs of William Smyth deed.,
Amanda Howard deceased, Chandler Bran-
son deceased, Fannie Howard deceased,
Ninrod Branson deceased, Barbary Par-
sons deceased, Oma Hobbs deceased, Em-
ily Moor deceased, Laura Harber deed.,
and Elkanah Ely deceased, it

is ordered that they do appear here within
fifteen days after due publication hereof,
and do what may be necessary to protect
their interest in this suit. And it is further
ordered that a copy hereof, be published
once a week for four weeks in the South-
west Virginian, and that a copy be posted
at the front door of the court-house of this
County on the first day of the next term of
the County Court. A copy—Teste:

A. B. MUNTEY, Clerk.

Pennington Bros. p. q. 4-26-00-4t.

ORDER OF PUBLICATION.

John J. Ely & Mary P. Ely

VS.

IN CHANCERY.

J. Morrison Smith et al

FEE \$13.60

Nov 23 1900

Peffo Costs

Clerk 19.06

Tax 1.50

Shff 46.40 Pd

Atty 15.00 Pd

Guard ad litem 5.00

Printer 24.80

Comm 50.00

County C 6.80

Baker J P 7.50

Witnesses 7.50

Estimated 10.00

193.56

Peffo Costs

Clerk 19.06

Tax 1.50

Shff 46.40

Atty 15.00

Guard 5.00

Printer 24.80

Comm 50.00

Co Clerk 6.80

J P 7.50

Witnesses 7.50

Estimated 10.00

193.56

W. B. Allen

W. B. Allen

W. B. Allen

J. J. & Mary P. Kelly

vs { Bill in Chanc.

J. M. Smyth et al

Office Costs 20.45
for 1.50
Shiff 46.00
glue 15.00
by J. J. 5.00
Printer 13.60
Estimate 10.00
\$111.55
9.20
Dr. J. J. 120.75